

PROF. MACMAHON BALL (Chairman): We may have to give a broader definition to constitutionalism in the setting of a country where the primary need is economic development. It will not necessarily be identified with any particular democratic form but with freedom from caprice and the arbitrary decisions of rulers, as 'authority' or 'authoritarianism' but without injustice and without terror.

MR. JUSTICE ELSE-MITCHELL: I should like to take issue with the Chairman. We all like the generality of such phrases as 'justice'. However, the essential point is who is to decide in the particular case when authority has overstepped the bounds. Ultimately in any system where you have power in the hands of any group, there must be some organism to determine the limits of that power. Parliaments play part of this role in relation to the executive. But in the final issue no better way has been found than by confiding this task to the courts.

MR. NISH: The first impression which one derives from reading Dr. Maung's paper and hearing his remarks, is that the Burmese constitution has had very little effect on the history of Burma in the last formative decade. "The constitution seemed to lie dormant; but it never died." "The constitution came through intact." The constitution has been a passive rather than an active force in Burma's political development. Up to 1958 Parliament held only brief sessions; and the Prime Minister made his policy statements at press conferences rather than in the Chamber. Yet the constitution has not been repudiated, even during the period of military rule.

Another impression left by Dr. Maung's paper is that he has not asked us to look at the Burmese constitution or its politics as those of a Buddhist state. This surprises me because I have always thought that there was something about Burmese politics which could not be explained in Western terms. When in 1956 U Nu retired from politics, he announced that he was entering a monastery. Here, we thought, was something which could only happen in a Buddhist State. At the same time in India, Pandit Nehru frequently announced his intention of going into retreat for a year, a type of

abnegation which is quite alien to Western politicians. We would like to hear more from Dr. Maung about the part played in Burmese politics by Buddhism which has lately been so active in Ceylon.

Our interest is naturally focussed on the period of military rule from October 1958 until February 1960. The cause of the military take-over appears to have been the split of the AFPFL party. This raises the important general issue: the working of a single-party system with one large 'independence' party which has been a feature in Asian countries. Perhaps the situation is not dissimilar to that in India where the Congress Party probably still receives great support at elections because of its past record as an 'independence' party regardless of its present constructive policies.

Dr. Maung states two interesting propositions on this subject. First, when the single party—the AFPFL—was supreme, the constitution was dormant; when an opposition party came into being, the constitution became the battle-cry and parliamentary institutions began to matter. Second, as party politics increased, the efficiency of the administration declined. When power returned to U Nu after the elections of February 1960, there was a sharp decline from the efficient administration of the Ne Win regime.

From Dr. Maung's special knowledge, he is able to escort us behind the scenes of the military take-over. He reminds us that General Ne Win was voted into office by Parliament; and praises U Nu for his statesmanlike action in making over office to the military. U Nu can be applauded for his shrewd political manoeuvre but surely this was an act of desperation and can hardly be described as a statesmanlike solution. I had always suspected that what happened in Burma was a seizure of power by the army in the same way as within a matter of a few months Marshal Sarit took over in Thailand and General Ayub in Pakistan. But Dr. Maung tells us that "when General Ne Win became Premier there was never a doubt that he would do his duty under the constitution". Indeed the uniqueness of the Burmese military take-over was not in the army assuming power but in the army returning power to the civil government. Burma's experience is distinguished by the devotion of the military and the strange abnegation not just of General Ne Win but also of the 'young colonels'. This suggests an unexpected respect for the otherwise nominal constitutionalism in Burma about which I should like to hear more.

PROF. SAWER: On the question of the influence of Buddhism, I remember an experience when I sat in on meetings of the Ceylon committee on capital punishment. Professor Norval Morris attempted to find out the Buddhist attitude to capital punishment, but the Buddhist hierarchy refused to commit themselves. Eventually he managed to get three young Buddhist intellectuals to express a view, but they proved very slippery during questioning. It was clear that in principle Buddhists felt they could not have any attitude on this matter, nor indeed on any practical matters of state.

This is in some respects a good thing, since probably democracy works best in countries where powerful organised religious groups or churches interfere least in the ordinary day-to-day business of government. But it is also a great difficulty in any society if there is no general acceptance of a set of moral values and even acceptance of a common moral code, at least in general terms, and it is also very desirable that these values and this code should provide some guidance to the makers of constitutions and of laws, even on relatively mundane affairs. A legal system having no relationship to the moral system of the people concerned would be unworkable. If, however, the dominant organised religion of a country refuses on principle to supply any practical guidance at all to the legislator, then there is serious danger of the constitution and the law becoming disassociated from the people's moral code.

PROF. MORRIS-JONES: I sense in some of the non-lawyers here a certain sceptical impatience with complacent talk about constitutionalism in Asia. They are perhaps scared that if we listen only to the lawyers we shall be caught napping by the next military *coup d'état*.

I want to defend the lawyers. They do well to dwell on procedures, for these are not 'mere' means; they are not neutral in effect, they are 'end-conditioning'. In countries like India where a constitutional system has been in steady operation for some time, people are moulded by it. Even those who follow procedures without understanding the point of them are nevertheless changed by doing so. The following of certain rules—in courts, in parliaments, even in electoral behaviour—points men towards certain values. One might add the further small point that legal ways of thought cannot be uninfluential in countries where so many politicians are lawyers.

Moreover, adherence to constitutionalism need not always be fragile just because men seem not to care enough about Liberty (with a capital L). After all, constitutionalism in Britain developed out of the protection of privileges, small-l liberties. It was also born of suspicion of government. In many Asian countries deep-seated distrust of government still plays a part in strengthening attachment to constitutional procedures.

DR. MAUNG: I would like to add to my paper some words about the period of army rule in Burma, as I think this has been widely misunderstood. The period of army rule was distinguished by the following features: First, Ne Win was *invited* by the Prime Minister U Nu to assume power for a limited period; secondly, the psychology of the army was interesting. The men concerned were not always very bright but were honest and courageous and hard-working. They came to work early in the morning and left late at night—not a common feature previously. They had respect for regulations and worked 'by the book'. If you could show them a law they would stick to it.

They respected the idea of democracy and wanted to work it. In fact, it was under the Ne Win Government that official recognition was first given to the post of Leader of the Opposition.

Javid Iqbal

THE ISLAMIC STATE IN PAKISTAN

IT HAS been declared time and again that Pakistan is an ideological State, a State which is founded on the ideology of Islam. A question may be asked: to what extent is the Pakistanis' claim to be the inhabitants of an ideological state justified?

I

The Hindus and Muslims of the Indian sub-continent entered modern history as two distinct and separate religious communities—the former, a majority, and the latter, a large minority. Whereas the infiltration of such new ideas as nationalism, radicalism, secularism and constitutionalism from the West made the Hindus politically conscious and forward-looking, it had the effect of making the Muslims look back to their glorious past, to the days when they were the masters of India. Consequently Muslims clung to their medieval social order, refused to accept modernity, and let Hindus take a lead in modern education and economic development.

When the Hindus came under the spell of Indian nationalism and demanded the introduction of representative institutions or dreamed of establishing self-rule in India, the Muslims, for the first time in their political history, became conscious of their educational, economic and numerical inferiority. A democratic government, they felt, would mean the rule of the Hindu majority. Accordingly, to safeguard their interests, they insisted that if democratic institutions were introduced in India, it should be on the basis of separate electorates for Hindus and Muslims. The acceptance of this demand in the Constitutional Reforms of 1909 facilitated the introduction of democracy in India; at the same time it established the Muslims as a distinct political entity.

For many years the Muslims were on the defensive. Their political activity continued to be inspired by the anxiety that if India

attained independence there would hardly be any share for them in self-government at the Centre owing to their numerical inferiority. However, there were territories in the Indian sub-continent where they predominated. As the Muslims progressed politically, they came to lose interest in the Centre and gave their whole-hearted support to the idea of federal government in India with a large amount of provincial autonomy. From 1925 to 1935 their political struggle concentrated on the demand for the extension of the reformed constitution to the North West Frontier and Baluchistan, separation of Sind from Bombay Presidency and its establishment as a separate province, and the bringing of the Muslim majority into power in the Punjab and Bengal.

The Hindus opposed the Muslim demand for federalism with a large amount of provincial autonomy, because it meant the creation of a Muslim bloc in the North West of India. Muslims started to regard 'the vast continent of India' as 'a geographical misnomer' having no unity except 'the misleading unity of opposition'. The cleavage between Hindus and Muslims gradually made the Muslims conscious of themselves as a nation.

The extension of constitutional reforms to the North West Frontier, the separation of the predominantly Muslim Sind from Bombay Presidency and the Government of India Act, 1935, provided Muslim India with a new opportunity for self-organisation in the Muslim majority provinces. It is, however, interesting to note that Muslim national consciousness developed in the Hindu majority provinces before it came to the Muslim majority provinces; in the latter Islam was not on the defensive. It was the Muslims of the Hindu majority provinces who made the whole of Muslim India conscious that Islam was in danger.

Muslim leaders pointed out that ideologically India had always remained divided into Hindu India and Muslim India; and that history had failed, in the previous twelve hundred years, to bring about a genuine unity between the two. The unity of India was artificial and was maintained by the British bayonet. Quaid-i-Azam Muhammad Ali Jinnah advanced the Two Nation theory. Between 1935 and 1940 he finally organised the Muslims politically and made them a group which could count, alongside the Hindus and the British, in the political balance.

In March 1940 the Pakistan Resolution was passed at Lahore.

This laid down the principle of the secession of the Muslim majority areas from India. The Muslims thereafter maintained that the Indian problem would not be solved unless and until the major nations were allowed separate homelands by partitioning India into autonomous national states. It was on the basis of this Resolution that Pakistan was created.

There were working at the same time other forces which influenced the trend of Muslim political thought in the Indian sub-continent. Ever since the decline of Islam in India, Indian Muslims had looked with pride and hope towards the vast, independent, autocratic and medieval Ottoman Empire in the Middle East. To them the Ottoman Sultan-Caliph was a symbol of Pan-Islamic solidarity. From the establishment of Muslim rule in the Indian sub-continent (in 711) to the accession of the Mughal Emperor Babur (in 1526), Muslim India has remained constitutionally linked with the rest of the Muslim world through acknowledgement of the central Caliphate (first established at Medinah, then at Damascus, Baghdad and finally at Cairo). However, before the Mughals established themselves in India, the Caliphate was transferred to the Ottomans and its centre shifted from Cairo to Constantinople. The Mughals and the Ottomans had dynastic rivalries; so throughout the period of Mughal rule, Muslim India remained cut off from the Ottoman Empire. When the power of the Mughals declined and India fell into the hands of the British, the question how were the Muslims of India or those living outside the Ottoman Empire related to the Ottoman Caliphate, came to occupy the Muslim mind.

By the close of the eighteenth century, expanding European powers had penetrated into the Ottoman Empire. This penetration resulted in some cases, in the occupation, and in others, the economic exploitation of Muslim lands by Western colonial powers. It led to a 'puritanic' revival in Islam and a violent condemnation of the West. But within a generation or two, the ideological clash between medievalism and modernity broadened the 'puritanic' beginnings of the Muslim revival into what has been termed 'liberalism'; the work of 'Islamicising' Western ideas was taken up by Muslim reformers. Accordingly, Muslim reformers began to lay stress on the acquisition of the techniques of European progress and exhorted Muslims to grasp the secret of Western power.

As external European pressure continued, it led Muslims to aspire for a certain solidarity which has been termed 'Pan-Islamism'. This movement for 'Pan-Islamic' solidarity helped to make the Indian Muslims politically conscious. Shortly after the 1914-18 War, when the Ottoman Empire was dismembered, 'Pan-Islamism' further developed into 'Muslim nationalism'. A multiplicity of independent and semi-independent States emerged from the ruins of the medieval Ottoman Empire, most of them overwhelmingly Muslim. But 'nationalism' raised a problem in countries like India where the Muslims constituted a minority. Consequently, Muslim India was much less inclined to accept 'nationalism' in the Western sense, founded on some purely secular basis, whether racial, linguistic or territorial. It was the contribution of Muhammad Iqbal to make it clear that Islam rejects the principle according to which the unity of a people is founded on a purely racial, linguistic or territorial basis. He maintained that as a political ideal, 'nationalism' makes claims which are contrary to Islamic teachings.

Iqbal taught that the Muslims are bound together not by racial, linguistic or geographical ties, but by their communal brotherhood. Each Muslim receives his identity not because he belongs to a particular race, tribe, caste, colour, linguistic group or territory, but because he belongs to the Muslim community. He believed that Islam was neither 'nationalist' nor 'imperialist' but a 'commonwealth of nations' which accepts racial and linguistic diversity, and the ever-changing geographical demarcations of which exist only for facility of reference and not for limiting the social horizon of its members.

So, in Muslim India, 'Muslim nationalism' came to mean the political and cultural emancipation of numerous races, speaking different languages, but professing Islam and inhabiting those territories which comprise the world of Islam, without that emancipation coming into conflict with the general principles of equality, fraternity, and solidarity among Muslims as established by their religious usage and cultural coherence. In this sense, and in this sense only, 'nationalism' could be Islamicised.

Iqbal attacked 'secularism' as a concept completely alien to Islam. In his opinion, it led to the establishment in Europe of a set of mutually ill-adjusted States dominated by interests not human but national. Instead of achieving a unity in the light of Christ's teaching on human brotherhood, these states trampled on the moral and

religious convictions of Christianity and dragged Europe into internecine wars.

But Iqbal was ready to Islamicise 'constitutionalism'. He approved of the growth of a republican spirit in Muslim countries, which he regarded as a return to the original purity of Islam. The establishment of legislative assemblies in the Muslim lands necessitated the revision of old Muslim legal institutions in the light of modern experience. Accordingly, he laid emphasis on the need for a reform in Muslim law as well as in Muslim legal instruction, and recommended the revival of *Ijtihad* (independent inquiry) to enable Islamic law to be re-interpreted in the light of modern experience and the altered conditions of modern life.

Iqbal furnished the Muslims also with an Islamic interpretation of 'socialism'. He argued that, from the standpoint of Islam, human society was founded on 'the equality of spirits' and not on 'the equality of stomachs'; private ownership was regarded as a trust, and capital should not be allowed to accumulate in such a way that it dominated the real producer of wealth. He believed that Islam could create a new world where the social rank of man would be determined not by his caste or colour, or by the amount of dividend he earned, but by the kind of life he lived.

Thus Pakistan came into being because the Muslims of the Indian sub-continent sought for a State in which to implement the social order of Islam, not because a State first came into being and then endeavoured to be Islamic. The racial and linguistic diversity within Pakistan and the geographical non-contiguity of Pakistan indicate that it must be an ideological rather than a 'national' State.

The Constitutional Discussions

In 1949, shortly after Pakistan came into being, the Constituent Assembly passed the Objectives Resolution according to which the future constitution of Pakistan was to be based on "the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam". It was resolved that under the future constitution the Muslims of Pakistan should be enabled individually and collectively to order their lives in accordance with the teachings and requirements of Islam, and that adequate provision should be made for minorities freely to profess and practise their religion and to

develop their culture. The Assembly appointed a Basic Principles Committee to prepare a report on the main principles on which the future constitution could be framed. The Committee submitted its report to the Assembly in 1952.

The Committee recommended a democratic form of constitution based on a federation of the participating Units. It suggested the election of a Head of State, with a Council of Ministers headed by a Prime Minister to advise him. There should be a Federal Legislature consisting of two Houses, and elections should be held on the basis of adult franchise. For the Units, it recommended the appointment of a Head for each Unit by the Head of the State, the election of a Council of Ministers (headed by a Chief Minister) to advise the Head of each Unit, and the establishment of popularly elected Unit Legislatures. The Committee also made recommendations regarding the relations between the federation and the units, the constitution of the courts, and other matters.

The main features of the Committee's Report regarding the place of Islam in the future constitution were: that the Objectives Resolution 1949 should form the Preamble of the future constitution; that the Directive Principles of State Policy should be the preservation of democracy within the limits prescribed by the *Quran* and the *Sunnah*; that the State should take steps to bring the existing laws into conformity with Islamic principles; that no legislation be made which was repugnant to the *Quran* and the *Sunnah*; that the teaching of the *Quran* to Muslims should be made compulsory; that Islamic moral standards should be promoted and maintained, and so on.

To prevent the passing of legislation repugnant to the *Quran* and the *Sunnah*, the Committee recommended the appointment (by the Head of the State) of a Board consisting of not more than five persons well versed in Islamic law. This Board of *Ulema* should act in an advisory capacity and determine whether the laws that the Assembly passed were in conformity with or repugnant to Islam. The Committee also suggested that the Head of the State should be a Muslim; and that separate electorates should be maintained for Muslims and non-Muslims. Before the Report of the Basic Principles Committee was examined, the Constituent Assembly of Pakistan passed a bill of Fundamental Rights.

When the Committee's Report was considered by the Constituent Assembly, the Islamic character of the recommendations was

severely criticised. There was not, however, much discussion on such matters as making the Objectives Resolution 1949, a part of the Preamble, or including the Directive Principles of State Policy in the future constitution. It was argued that these provisions were not legally enforceable and were merely 'pious hopes'. But the recommendations that the Head of the State should be a Muslim, that separate electorates should be maintained, and that a Board of *Ulema* should be appointed to supervise the legislative activity of the Assembly were very severely attacked in the Constituent Assembly debates.

Regarding the first of these, Sardar Shaukat Hyat Khan pointed out sarcastically: "They say that it will be an Islamic constitution because the Head of the State will be a Mussalman. Imagine the hypocrisy of this. Only a few months ago the Fundamental Rights were passed . . . (which said in one section) that every duly qualified citizen shall be eligible to appointment in the service of the State irrespective of religion, race, caste, sex, descent or place of birth . . . (Now) they say that only a Mussalman will be the Head of the State. I am a Mussalman, and I am just as good a Mussalman as any one of them. But I am not a Mussalman who makes promises to the minorities . . . and just after a few months brings forward another thing which is quite opposite to what was agreed earlier. Now, Sir, is it a Report of the Basic Principles Committee or is it a report of hypocrisy? Sir, I imagine that the population of this country will be 85 per cent Muslim. If a Muslim cannot be returned as Head of the State with 85 per cent Muslim population and a Hindu is returned with a population of only 15 per cent that Hindu must be a saint . . . So why put it hypocritically? Why try to say to the world that he will be a Muslim? Why put it that he should be a Muslim in a country where 85 per cent of Muslims live? Are they not competent to judge who is their representative? . . . Whom are you trying to please—the Muslims? Whom are you trying to displease—the minorities? The question is they are even doing things which must prick their conscience. They seem to be making a fun of our poor illiterate public opinion. They are trying to please the people by giving a little morsel here and a little morsel there which is absolutely meaningless. Now, Sir, this provision goes against the Fundamental Rights."¹

¹ Official Report C. A. of Pakistan Debates, 13th October 1953, 127, 128.

In defence of this recommendation it was argued that it was a fundamental principle of an Islamic Constitution that a person who did not believe in 'Allah' could not be expected to rule over Muslims. Since Pakistan was an ideological State, the Head of State should be one who believed in the ideology on which Pakistan was founded. It was further argued that in the constitutions of Afghanistan, Argentina, Denmark, Greece, Iran, Norway, Paraguay, Saudi Arabia, Spain, Sweden, Syria, Thailand and England provisions were made regarding the religion of the Head of State.

As for the maintenance of separate electorates, Sardar Shaukat Hyat Khan said: "Sir, another hypocrisy, another great shame upon the so-called Muslims who are sitting there after the treaty with the minority community. They say they are protecting the rights of the Hindus by giving them separate electorates . . . (when the representatives of the Hindus) are asking for the joint electorates."²

On the recommendation regarding the appointment of the Board of *Ulema*, he commented: "Sir, they say here that no law will be made which is against the injunctions of the *Quran* or the *Sunnah* . . . They say it will go back to certain people, who will pronounce upon it; after they have pronounced upon it then it will go back to the Assembly and then the Assembly can accept or reject it . . . But what will happen is that these gentlemen . . . will be called Kafirs by all those who do not get a seat in that Board of advisors and who think they are fit enough to be there and who feel that they should sit on the advisory board . . . Then if they do not declare certain laws to be un-Islamic they will be called Kafirs, in fact if the Assembly as a whole passes such a law it will be called Kafirs. Now why do you not trust the Members of the Assembly? If supposing an enactment comes here before the Assembly the Muslims will be in a majority and why do you not allow them to decide things according to their conscience and according to Islam? . . . It is all subterfuge, Sir, and it is trying to hoodwink the people. We are the people who are to be elected on the Muslim votes and we should come here and work and see what we decide is according to Islam and it cannot be against *Quran* and *Sunnah*, because none of us would have given up Islam when we get elected and come to the House as Members."³

² Debates, 13th October, 1953, 131.

³ Debates, 13th October, 1953, 129-30.

It was argued that since the proposal of the appointment of the Board of *Ulema* had not received support from any section of the people, it should be dropped and the Supreme Court of Pakistan should be given the necessary jurisdiction to judge whether the laws passed by the Assembly were in conformity with or repugnant to the *Quran* and the *Sunnah*. This was agreed to by the First Constituent Assembly, but later dropped by the second.

The Constituent Assembly also discussed the proposal that Pakistan should be declared an Islamic Republic. In support of this, Sardar Abdur Rab Nishtar said: "It is necessary to give some indication about the nature of our republic. According to the Objectives Resolution the character of our constitution is to be based on principles of equality, democracy and tolerance as enunciated by Islam. Therefore, it is quite natural that this Republic should be described as an Islamic Republic. Take the name of the great country U.S.S.R. It is described as Socialist Republics. . . . Islamic Republic of Pakistan means that this republic would be run in accordance with the principles laid down by Islam."⁴

Consequently, in 1953 Pakistan was declared an Islamic Republic, in spite of the opposition of a few realistic Muslims and of many of the non-Muslim members of the Constituent Assembly. The Report of the Basic Principles Committee was eventually adopted by the Assembly in September 1954 with some amendments. The proposal for a Board of *Ulema* had been dropped; the question of separate or joint electorates was left to be determined by the Central and Provincial Assemblies formed under the Constitution. They adopted the principle of joint electorates.

The 1956 Constitution

By 1955, East Bengal was renamed as the province of East Pakistan, and West Punjab, North-West Frontier, Sind and Baluchistan were integrated into one unit called the province of West Pakistan. In the following year, the Constitution of the Islamic Republic of Pakistan was promulgated.

The 1956 Constitution was based on the amended recommendations of the Basic Principles Committee. The Objectives Resolution formed its Preamble, and the Directive Principles of State Policy

⁴ Debates, 26th October, 1953, 461.

were specifically mentioned (though merely as 'pious hopes'). The Constitution contained a chapter on Fundamental Rights (which were legally enforceable), but no express attempt was made to show that they were based on Islamic principles.

The constitution was a mixture of the British and American constitutional patterns. It established a democracy based on a federation of the two participating provinces of East and West Pakistan. The members of the National Assembly were to be elected on the basis of adult franchise, and the representation in the National Assembly from the two wings of Pakistan was to be determined under the principle of parity. There were provisions for the election of the President by the combined votes of the National and Provincial Assemblies. There was also to be a Cabinet of Ministers headed by a Prime Minister.

As for the two provinces, the Constitution made provisions for the appointment of Governors by the President. These Governors were to act according to the advice of an elected Council of Ministers (headed by a Chief Minister in each province). The Provincial Assemblies were to be elected on the basis of adult franchise.

There were also provisions regarding the relations between the federation and the provinces,⁵ for an independent Judiciary (composed of the Supreme, the High and the Subordinate Courts), Services and Public Service Commissions, etc.

As for the place which Islam occupied in the constitution, it has already been stated that the constitution was given the name of the Constitution of the Islamic Republic of Pakistan, its Preamble contained the Objectives Resolution, and it enumerated 'Directive Principles of State Policy', which were however devoid of force of law. These stated (*inter alia*) that the State "shall endeavour" to strengthen the bonds of unity among Muslim countries, to enable Pakistan Muslims to order their lives in accordance with the *Quran* and the *Sunnah*, to safeguard minority rights, to remove illiteracy, and to raise the standard of living.

Insofar as Islam was given any practical legal significance in the 1956 Constitution, it was in two ways. First, through Article 32(2)

⁵ The Provinces had wider powers than the States have under the Indian Constitution. However, their independent sources of revenue were severely limited.

under which a person was not qualified for election as President unless he was a Muslim; and secondly, through Articles 197 and 198 (in Part XII, Chapter 1—Islamic Provisions). Under Article 197 the President was obliged to set up an organisation for Islamic research and instruction in advanced studies to assist in the reconstruction of Muslim society on a truly Islamic basis; and under Article 198 the President was expected to appoint (within one year of the promulgation of the Constitution) a Commission of Experts to make recommendations 'as to the measures for bringing existing laws into conformity with the Injunctions of Islam'. The Commission was to submit its report to the President within five years of its appointment. This report was to be placed before the National Assembly and the Assembly after considering the report was to enact laws in respect thereof.

As for the condition that no person could be eligible for election as President unless he was a Muslim, it did not in any way justify the claim of the 1956 Constitution to be Islamic. In almost all secular States the elected Head of State professes the religion (or belongs to the sect) the adherents of which constitute the majority in the country.

As to the obligation to set up an organisation for Islamic research and instruction in *advanced* studies, it was not carried out. Such organisations for Islamic research as were established were not affiliated with the universities. Consequently the students failed to derive any benefit from them, and the object of reconstructing the Muslim society on a truly Islamic basis through these organisations was not achieved. Article 198 was paradoxical. Although the Constituent Assembly was apparently able to determine the Islamic character of the Fundamental Law of Pakistan (the constitution) without the assistance of Experts, the ordinary laws of the Muslim community were left to be determined by such a body, but ratified again by non-Experts.

In short, the position which Islam occupied in the 1956 Constitution reflected the attitude of hypocrisy and vagueness of the Muslim framers of that constitution. Islam was presented in the constitution in the form of a legal fiction. On the eve of his retirement, Justice Muhammad Munir (former Chief Justice of Pakistan) summed up his opinion of the 1956 Constitution. In his farewell address to the West Pakistan High Court Bar Association, Lahore, he said: "Our

Constitution, though it purported to be a constitution for the Islamic Republic of Pakistan, had hardly anything Islamic except the repetition of the words Islam, Quran and Sunnah."⁶

The 1958 Revolution and the Islamic Ideal

If Quaid-i-Azam Muhammed Ali Jinnah had lived for a few years more, he would certainly have indicated the direction in which the Pakistanis were to move. Unfortunately he died soon after the establishment of Pakistan. After his death (and particularly after the assassination of Liaquat Ali Khan, the first Prime Minister of Pakistan), although the number of Pakistani political parties increased, they were unable to present to the people either a convincing programme or an inspiring leadership. Some of the political leaders who gained power during this period were more concerned to maintain themselves in power than to put into practice the ideology on which Pakistan was founded. Consequently the holding of general elections was postponed every year, and coalition governments came and went in rapid succession both at the Centre and in the Provinces. Sometimes a single person would manage to acquire power through his personal drive, skill or intrigue; at other times a group of individuals would manage to attain power and pull the strings from behind the curtain, or a small political party of alien ideology would become the decisive factor in the running of the governmental machinery.

In spite of progress in some fields, the state of the country's economy remained unchanged. The major problems of Pakistan, the settlement of refugees and evacuee property, the Kashmir issue, the distribution of canal waters, and the lack of basic necessities of life (such as food, clothing, housing, education and medical relief) remained unsolved. On the contrary, the system of permits, licences and price controls encouraged the growth of black-marketing, smuggling, corruption and maladministration. All this inevitably resulted in the spreading of a sense of frustration and despondency in the country. Even the Islamic State idea appeared to peter out and was neglected and frustrated, leading to a mood of disillusionment.

Political instability was not only affecting the prestige of Pakistan abroad, but making Pakistan internally weaker every day. It

⁶ *Pakistan Times*, 23 April 1960.

came to be generally felt that even elections would not improve conditions but might lead to greater instability, confusion, disintegration and chaos in the country. On the morning of 8th October, 1958, the people of Pakistan woke up to find that a resolution had swept the country, the Constitution of the Islamic Republic of Pakistan had been abrogated and Martial Law had been imposed.

Ever since it gained power, the revolutionary government has endeavoured to check black-marketing, smuggling, corruption and maladministration. It is making strenuous efforts to solve the major problems of Pakistan. At the same time, it is trying to work out a democratic pattern of government which will suit the genius of the people. 'Basic democracies' have already been introduced in the form of local self-governing bodies, and a Constitution Commission has been appointed to submit proposals in the form of a report advising how best a democracy adaptable to changing circumstances can be secured.

As for the attitude of the revolutionary regime towards the Islamic ideal, a critical examination of its internal and external policy would reveal that it is not revolutionary in the sense that its object is to erase completely the past from the minds of the people and to start with a programme of reforms based on some wholly new and radical ideology. The regime aims at clearing up the political, social and economic mess which had resulted from the lack of vision at the top in the past ten years, and reviving the fundamental principles on which Pakistan was originally founded. Any form of turning back to the original principles which led to the establishment of Pakistan would automatically involve a revaluation of the Islamic ideology. The Pakistani revolution was entirely peaceful. It was a revolution without those elements of violence and ferocity which characterised the French, the Russian, the Chinese and the more recent Egyptian and Iraqi revolutions.

The Head of the present regime, Field-Marshal Muhammad Ayub Khan, is fully aware that the basis on which the Muslims struggled for and got Pakistan was Islam, and that the establishment of Pakistan was a magnificent achievement. He has frequently said that this achievement was wrongly considered by most Pakistanis as an end in itself. In reality it was, of course, only the beginning of the struggle, for the problem of building Pakistan and expressing Islam

in a practicable way still lay before Muslims, and that was and is an infinitely greater and more difficult task.

Thus the terms of reference which the recently appointed Constitution Commission has to consider and to answer are worded as follows:

"To examine the progressive failure of parliamentary government in Pakistan leading to the abrogation of the Constitution of 1956 and to determine the causes and the nature of the failure; To consider how best the said or like causes may be identified and their recurrence prevented;

And, having further taken account of the genius of the people, the general standard of education and of political judgment in the country, the present state of a sense of nationhood, the prime need for sustained development, and the effect of the constitutional and administrative changes brought into being in recent months, to submit constitutional proposals in the form of a report advising how best the following ends may be secured:

a democracy adaptable to changing circumstances and based on the Islamic principles of justice, equality and tolerance; the consolidation of national unity; and a firm and stable system of government."

The Commission has issued and distributed among the people a questionnaire based on the above terms, and the replies have already started pouring into the office of the Commission. Recently a group of prominent *Ulema* of Pakistan sent a reply which has received a considerable amount of publicity in the Pakistani Press.

The *Ulema* submit that the future constitution of Pakistan should be based on the *Quran* and the *Sunnah*; that since the 1956 Constitution was never put to a test and general elections were never held under the old constitution, the question of defining the nature and enumerating the causes of the progressive failure of the parliamentary pattern of democratic government in Pakistan could not arise and need not be answered; that since the people of Pakistan were familiar with the parliamentary pattern, the introduction of the presidential form of government in Pakistan would lead to many new difficulties; that the political leaders should be told to fear God and to perform their duties sincerely and honestly;

and that the old constitution should be re-adopted after necessary amendments.

It is, however, premature to express any opinion on the replies which are being received by the Commission, or the form which the future constitution of Pakistan should eventually take. The present regime (revivalistic rather than revolutionary) has so far consistently shown caution about adopting any programme of social, economic, cultural or educational reforms which may involve radical changes in Pakistan. It is for this very reason that the Pakistani revolution, with all its zest and vigour, remains fundamentally middle class.

Whether this attitude of restraint and hesitation (or dependence on the advice of the older group which is basically reluctant to accept change) is wise and proper in the face of a paramount need for the implementation of radical changes in all the spheres of the country's life, is a question which bothers every young Muslim radical in Pakistan today. The adoption by a people of a 'conservative' attitude towards life as a whole may be justified for the purposes of self-preservation when a country is under foreign domination. But when an independent people are called upon to construct an independent country, it is always the energy, vigour and drive of the young independent minds that lead to the solution of problems. If the conservative logic of the complacent old were to continue to dominate, it would do so at its own peril, for there comes a time in the lives of nations when logic is thrown to the winds and life struggles relentlessly to determine its own direction.

II

Constitutional Theory

In the Western mind, the term Islamic State seems to conjure up, as Keith Callard has aptly put it, "vague (and usually unhistorical) visions of Muslim fanaticism, the holy war, the Mahdi, the conquest of empire by the sword, the forced conversion of the Infidel, and the destruction of temples and idols".⁷ It will be discussed here first in the light of Islamic history and with due regard to the opinions held on this subject by the leading jurists of medieval Islam; and secondly, in the light of the teachings of contemporary Muslim

⁷ *Pakistan—A Political Study*, 195.

reformers. Lastly, it may be worthwhile to consider the factors that hinder or impede the establishment of the Islamic State in Pakistan today.

The Prophet established no church or body of priests. When he died, the task of maintaining and interpreting his teachings was regarded as that of the whole Muslim community. It was recognised that some would be more expert and learned than others, but even the opinions of the latter had to secure acceptance by the people. Islam believes that religion and the rest of life cannot be separated. The ideal Islamic State would be a whole community living their lives in all respects according to Muslim ideals. It is thus quite wrong to speak of the Muslim ideal of the State as 'theocratic' in the sense of one ruled by a church, though any Muslim State must be religious in character.

Distinguishing the secular State from the Islamic State, Ibn Khaldun (1332–1406) points out that the secular State is based on the principles derived through human reasoning and therefore it promotes only material advancement; but since the Islamic State (Caliphate) is based on the Revealed Law, it promotes both the material and spiritual advancement of the people.⁸

The Muslim idea of a Head of State was a man of high personal qualities, to be elected or otherwise agreed upon by the Muslim community, who would lead them in all matters but also be answerable to them.

Up to the time of Al-Mawardi (991–1058) and even later, it was generally believed that the Head of the Islamic State should not only be a Muslim of upright character but must be from the tribe of Quraysh. (The Shia Muslims impose further restrictions, e.g. he must be a descendant of Ali). From at least the twelfth century onwards the conditions of Qurayshite lineage was discarded by many Muslim jurists (e.g., Abu Bakr Baqilani, Ibn Khaldun); but the condition of his being a Muslim was always accepted throughout the Muslim world.

The Head of the Islamic State could only be a Muslim for, apart from his secular duties, he was obliged to perform certain purely religious functions (the leading of the congregational prayers, the interpretation and promulgation of Islamic law, the propagation and defence of the religion of Islam and the suppression of the growth

⁸ *Muqqaddima*, 190, 191.

of heresy). Secondly, by the time the Muslim jurists started formulating Islamic constitutional theory, hereditary monarchies had been firmly established and Muslim dynasties were ruling all over the world of Islam. Although some of these Muslim monarchs performed the religious duties which they were obliged to perform under Islamic law, a large majority of them were merely secular kings who ruled entirely on the basis of their military strength.

The Muslim claim that the original and ideal Islamic State is republican in form, is based on the practice of the Orthodox Caliphs (632-661), before the Caliph came to acquire kingly prerogatives. Muslim jurists maintain that the basis of Government according to Islam is 'General Consultation among the Muslims' (*Al-Shura*). God says in the *Quran*: "And those who respond to their Lord and keep up prayer, and their rule is take counsel among themselves" (42; verse 38). Even the Prophet is urged by God to consult the believers, for God says: "Therefore forgive and ask for pardon for them, and consult them in the affairs" (3; verse 159). In order to safeguard the state from disruption and chaos, the *Quran* enjoins every Muslim to obey God, His Apostle and those members of the Muslim community who command authority over the Muslims (4; verse 59).

Although neither the *Quran* nor the Tradition suggested it, election came to be regarded as the basis for the appointment of the Head of the Islamic State (at least in the early stages) because it was Arab tribal custom and was in conformity with the spirit of Islam. Shortly after the death of the Prophet in 632, Abu Bakr was elected Caliph at Medinah by a small assembly of Muslims. According to Al-Mawardi there were five prominent Companions of the Prophet who swore allegiance to him and then the rest of the community followed. During the first phase election and nomination appeared side by side as methods for constituting the Head of the Islamic State. The First Four Caliphs were members of a single tribe (the Quraysh), but no Caliph entertained the idea of getting his son, brother, or father elected or nominated as Caliph. In other words, the hereditary principle of succession was specifically excluded from the early practice of Islam.

Although theoretically the Caliph was elected by the entire Muslim community, in practice he was elected either by a single eminent member of the community or by a restricted number of

eminent and influential men who had come to acquire 'the authority to bind and loose'. When the Caliph had been elected and the prominent members of the community had acknowledged him, only then the people of Medinah (the seat of the Caliphate) were called upon to take the oath of allegiance, and finally the people of the other important cities of Islam swore allegiance to the Caliph. The election of the Caliph was a matter that concerned Muslims exclusively and non-Muslims had no say. The term of office of the Caliph was not fixed. Theoretically he could be deposed under certain circumstances. But such a situation never arose during the first phase of the Caliphate.

The Head of the Islamic State was the successor of the Prophet (*Khalifah*), the interpreter and the promulgator of the law of Islam (*Imam*), the leader of the congregational prayers, the defender of the religion of Islam, the guardian of the Muslim community, the judge, the administrator and the supreme military commander (*Amir-al-Mominin*). Although the Caliph administered the State in consultation with the eminent Companions of the Prophet who composed an informal senate, he was not bound to accept their advice. He had wide powers, but he came under Islamic law and was answerable to the Muslim community for his actions. The duties of the citizens of the Islamic State were loyalty and allegiance to the Caliph and respect for the laws of Islam. The citizens were enjoined to co-operate with 'the leaders of the community' and to put them right in case they were led astray. The fundamental rights of citizens (Muslim or non-Muslim), as we understand them today, were fully secured during the first phase of the Caliphate.

Thus when Muslims refer back to the Orthodox Caliphate as the ideal Islamic State, they are referring not to any fixed mode of appointment of the Head of the State, nor to any fixed governmental structure, since each of the First Four Caliphs was appointed by a different mode and governed in a different way. The ideal which is to be derived from this period is that the Head of the State governed with the consent of the community, was completely open at all times to listen to and act upon criticism from any member of the community, and was subject to the law of Islam in the same way as any other citizen.

At the time of Abu Bakr's election, for example, another candidate was put forward by the people of Medinah; after discussion,

however, it was decided to make the election of Abu Bakr unanimous because of his age, wisdom and moderation. As soon as Abu Bakr assumed office as Head of the State he addressed the people as follows:

"I have been put in this office to conduct your affairs, although I am in no way superior to you. If I do right, help me; if I go wrong, put me right."

The contest between Ali and Muawiyah for the Caliphate led to the formation of three distinct religio-political parties. (The Shia, the Khwaraj, and the Sunni). If the contest between Ali and Muawiyah could have been resolved peaceably and without the disaster of the battle of Siffin, (and the terrorist activities of the Khwaraj which led to the assassination of Ali), it is quite possible that the early republic of Islam might have developed its own method of electing the Head of the State from among a number of candidates put forward by different religio-political groups.

Muawiyah used unscrupulous methods to defeat Ali, and then used his military strength to impose himself on the community as Caliph without their consent or approval. He went on to establish an hereditary Caliphate by nominating his son as his successor. He justified this action on the grounds that to leave the matter of his successor to the decision of the community would lead to civil war and anarchy among the Muslims. The failure of the later revolts against the hereditary Caliphs led to a spirit of disillusionment and fatalism among devout Muslims. In Iqbal's words: "Thus arose, in spite of open protests by Muslim divines, a morally degrading Fatalism, and the constitutional theory known as the 'accomplished fact' in order to support vested interests. This is not at all surprising. In our own times philosophers have furnished a kind of intellectual justification for the finality of the present capitalistic structure of society."⁹

Legislative, Executive and Judicial Powers

The Caliph in consultation with the Companions exercised the powers of legislation so long as he did not repeal, abrogate or set

⁹ Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (London, 1934), 110-11.

aside the Law of God. However, he had the authority to extend or limit the application of a Quranic rule of law when such extension or limitation was sanctioned under a Shariah value. The Caliph also interpreted the Quranic rules of law in the light of the Tradition (*Hadith*), the Consensus of the Community (*Ijma*), and the use of Analogical Reasoning in legislation (*Qiyas*). There is reason to believe that the First Four Caliphs in consultation with the Companions interpreted as well as promulgated the law of Islam.

The Caliph was the supreme executive authority. He appointed or removed the Tax-Collectors (*Amils*), Governors (*Amirs*), Controllers (*Nazims*), and State officials, and supervised all the departments (*Diwans*) of the State. During the reign of the Abbasids, when the Caliphate came under the influence of Persian ideas of sovereignty and the office of Minister (*Wazir*) was created, the Caliph acquired the power to appoint or dismiss the Ministers (*Wazirs*). According to Al-Mawardi, the Caliph had the authority to appoint two kinds of State officials—officials with 'delegated' powers (*Tafwiz*) and officials with 'restricted' powers (*Tanfiz*). The State officials were responsible to the Caliph. But if a State official infringed the rights of a citizen, the citizen could seek redress in the courts of law.

One of the most important features of the Islamic State in the first phase of the Caliphate was that the Judiciary was made independent of the Executive. The Prophet is reported to have authorised his Companions to act as Judges (*Qazis*). Umar, the second Caliph, is reported to have issued instructions to *Qazi* Abu Musa al-Ash'ari; these instructions enumerated the qualifications and defined the jurisdiction of the one who held this office. The Caliph was the sole authority to appoint the judges. Once the judge had been appointed, he became entirely independent, so much so that even the Caliph could be tried in his court. The judge could be dismissed by the Caliph only if there was a valid reason.

The Department of 'Hisba'

The Department of *Hisba* (Religious Censorship), a peculiar feature of the Islamic State, came under the *Muhtasib* (Religious Censor) who enforced the moral discipline of Islam upon Muslim citizens. God says in the *Quran*: "And let there be (formed) of a you a

community inviting to good, urging what is reputable and restraining from what is disreputable" (3; verse 104).

Under the law of Islam, the Caliph was expected to be *Muhtasib*. But if it was not possible for him to perform the duties assigned to this office, he was empowered to appoint the *Muhtasib*. The *Muhtasib* had a detachment of *Shurta* (police force) under his command, and he also acted as a magistrate of specific jurisdiction. The *Muhtasib's* duties were to detect, restrain or punish those who infringed the Rights of God, the Rights of Human Beings, and the Rights which were common to both God and Human Beings.

The Rights of God were public worship, the observance of fasts in the month of Ramazan, paying alms tax (*Zakat*) etc. It was the duty of the *Muhtasib* to see that the Muslims held Friday service in the mosque. He could punish those who were persistent in neglecting public worship, or were seen eating in public places during the month of Ramazan without any valid excuse. The *Muhtasib* made sure that the call for prayers (*Adhan*) was made at proper hours; he was responsible for the repair of mosques if they were left in a state of disrepair; he punished those who introduced heresies in Islam; or those who refused to pay the alms tax (*Zakat*) etc.; he checked women who went about without a veil; he checked men and women talking together in public places; he punished those who used instruments of music, or sold forbidden toys (such as dolls), or drank fermented liquors.

Wrongs that infringed the Rights of Human Beings were unlawful transactions, usury, false and defective scales, weights or measures, non-payment of debt, fraud in sale, coinage, etc. In this field the *Muhtasib* had jurisdiction over Muslim as well as non-Muslim citizens. It was the duty of the *Muhtasib* to stop anyone from building his house higher than that of his neighbour lest this interfered with the privacy of the neighbour, or implied disrespect of the quarters of the neighbour's womenfolk; or to order a man to cut the branches of his tree which spread into the courtyard of his neighbour. No wall or fence could be raised without the permission of the *Muhtasib*. Public thoroughfares could not be blocked. The *Muhtasib* punished those who treated their slaves or animals cruelly. He controlled teachers, shops, ferry-boats, buildings and in general exercised many of the minor functions of government often now associated with local authorities.

Wrongs that infringed the Rights common to both God and Human Beings were committed when, for instance, a divorced Muslim woman or a widow remarried without observing *Iddat* (a period of time to ascertain pregnancy); or when the *Imam* of the mosque (leader of public worship) lengthened the service unnecessarily so that the weak or old failed to stand it, or the people were hindered or delayed from performing other jobs; or when a *Qazi* made the people wait before opening his court. It was within the power of the *Muhtasib* to check these wrong-doers.

Religion and State

Islamic constitutional theory did not recognise the separation of Religion from the State. The Head of the Islamic State (Caliph) symbolised the unity of the spiritual and temporal in Islam. The Caliph was the supreme authority so far as the interpretation or promulgation of the law of Islam was concerned. He led the congregational prayers, and had the authority to delegate his powers to the persons appointed by him. Early practice in Islam was in conformity with a Tradition quoted in the *Mishkat* in which the Prophet is reported to have said that only the Head of the Islamic State (*Imam*) or the person or persons appointed by him are entitled to preach to the people.

Under the Ottomans, however (and also in Shia Iran, on the basis of the doctrine of the Major Occultation of the *Imam*), a functional division between the religious and the temporal was created for administrative convenience, and the office of *Sheikh-al-Islam* was established side by side with the offices of Ministers of State. The *Sheikh-al-Islam* was appointed by the Sultan-Caliph, and was delegated the powers to pronounce final Decisions (*Fatawa*) regarding the interpretation of the law of Islam, to administer the religious endowments (*Awqaf*), to manage the institutions of Islamic theological and legal instruction, to defend and to propagate Islam, to suppress the growth of heresy, to look after the mosques, to appoint the Imams of the mosque, mosque attendants, preachers and missionaries, and to pay them salaries from the State Treasury. The *Sheikh-al-Islam* held his office at the Sultan-Caliph's pleasure.

Attitudes towards Non-Muslims

The non-Muslim citizens of the Islamic State were called the *Dhimmis* (the protected people). Since Islam's attitude towards other religions is more than that of mere tolerance, freedom of religious belief and practice were guaranteed to non-Muslims during the early phase of the Caliphate, and none of the First Four Caliphs interfered with or declared any of the institutions and customs of the non-Muslims null and void.

God says in the *Quran*: "There is no compulsion in religion" (2; verse 256); and "And if thy Lord has pleased, all those who are in the earth would have believed, all of them. Wilt thou then force men till they are believers?" (10; verse 100). The Orthodox Caliphs, therefore, strictly followed the Quranic injunctions as well as the practice of the Prophet who never broke his treaties with the non-Muslims.

As for Jews and Christians, the *Quran* gave them the status of 'the People of the Book' (*Ahl-al-Kitab*) and allowed the Muslims to develop social connections with them. After the conquest of Persia, on the analogy of the status granted to Jews and Christians, Muslim jurists included the Magians and the Zoroastrians in the category of 'the People of the Book'. In Mughal India, under the influence of the Sufi orders, the Hindus also came to be regarded as 'the People of the Book', and the development of social connections between the Muslims and the Hindus was encouraged.

The *Quran* made it obligatory upon Muslims not only to show tolerance towards non-Muslims, but also to defend the places of worship of non-Muslims under their protection. God says in the *Quran*: "If God had not raised a group (i.e. the Muslims) to ward off the others from aggression, churches, synagogues, oratories and mosques where God is worshipped most, would have been destroyed" (22; verse 40). There are numerous examples in the history of Islam of Muslim tolerance and of Muslims defending the places of worship of non-Muslims.

The non-Muslim communities in the Islamic State were governed under their respective personal codes of law, and non-Muslim judges were also appointed to administer justice among them. The Head of the Islamic State was not empowered to declare any of the personal law of the non-Muslims null and void. On the other hand, although

all the citizens (Muslims as well as non-Muslims) came under the Islamic criminal law, there was one major distinction; and that was that if a criminal offence had been committed by a non-Muslim, he was awarded half the penalty that the *Quran* had fixed for a Muslim offender. The non-Muslims, of course, did not come under the *Hisba* jurisdiction of the *Muhtasib*.

Non-Muslims were exempt from the compulsory military service, and for this exemption as well as for their protection and defence, the *Jizya* tax was imposed on them. There are, however, numerous instances when retreating Muslim armies returned the *Jizya* because of their failure to protect or defend non-Muslims. There is also no evidence to support the view that the *Jizya* was regularly enforced.

Under the Orthodox Caliphs, Christians and Jews held posts in the Accounts Department of the State. During the first phase of the Caliphate, the State accounts were kept in the Coptic language and usually Coptic Christians were employed to keep the State accounts. Under the Umayyads, however, Arabic was made the State language, the Arabic coinage was introduced for the first time, and Muslims were employed for keeping the State accounts. Non-Muslims held major posts under the Umayyads of Spain, the Fatimids of Egypt, the Ottomans of Turkey and the Mughals of India. Under the Mughals Hindus were appointed ministers as well as governors of various Mughal provinces, and Mughal armies were even officered by Hindu generals.

Thus in the Islamic Middle Ages non-Muslims were permitted to profess freely and practise their religion, they were employed in the State services, their legitimate rights and interests were safeguarded and they were allowed to develop their culture. The Islamic States provided security for everyone, so much so that whenever the Jews were persecuted in Christian Europe, they found refuge in Muslim Spain, Turkey, Egypt, etc. There is hardly any parallel in the history of other nations contemporary with the Muslim States to Islamic tolerance and zeal for protecting the rights and defending the places of worship of non-Muslims.

The Evolution of Islamic Law

From the establishment of the Caliphate (in 632) up to the sack of Baghdad by the Mongols (in 1258), the most important and

significant feature of the Islamic State had been the growth, development and evolution of Islamic law. This evolution was made possible through *Ijtihad* (literal meaning, 'to exert'; in the terminology of Islamic law it means 'to exert oneself with a view to forming an independent judgment on a legal question').

Although there was no written law of Islam except the *Quran* in the first phase of the Caliphate, the Orthodox Caliphs exercised *Ijtihad* and assimilated freely what they found best in the surrounding cultures. Under the early Abbasids, there developed a ceaseless activity among Muslim legal thinkers to evolve and expand the scope of Islamic law in order to meet the needs and requirements of a growing civilisation. During this phase an elasticity of thought was encouraged in the field of interpretation of Islamic law and no fewer than nineteen schools of Islamic law and legal opinion developed. The outlook of the *Quran* came to be regarded as dynamic because the simple legal precepts laid down in the *Quran* were considered to possess great potentialities of expansion and development by interpretation. In the interpretation of Islamic law, although the legal thinkers of one generation would accuse one another of heresy on the slightest difference of opinion, the legal thinkers of the next generation would attempt to reconcile the differences of their predecessors.

Thus in the early phase of Islamic history, the Muslim legal thinkers, while remaining true to the original spirit of Islam, exercised *Ijtihad* creatively. They assisted the community in adjusting its religious outlook towards any new idea which infiltrated the world of Islam, and at the same time, they mitigated the apparent strictness of the Quranic laws by providing the community with broader interpretations.

However, certain other developments in Islamic culture brought an end to this creative phase. The development of Rationalism under the later Abbasids led to a misunderstanding among the conservative *Ulema* who thought that the inevitable result of a rational approach to the Revealed Law would be heresy and anarchy. On the other hand, the rise and growth of ascetic Sufism tended increasingly to occupy the best Muslim minds and to turn them away from concern with the mundane world. Finally the sack of Baghdad by the Mongols gave such a severe blow to Islamic culture that it did not show signs of revival until recent times.

From this time onwards there is a marked tendency towards conservatism in all phases of Islamic life. The *Ulema* were afraid of the introduction of innovations in the Islamic law and being themselves uncreative, they slavishly followed the dictates of the past authorities. They attached finality to the established schools of Islamic law in spite of the fact that the original founders of these schools never claimed such finality for their systems. The right of independent inquiry was practically withdrawn. This eventually resulted in the closing of the gates of *Ijtihad* and consequent immobility, rigidity and stagnation in Islamic legal thinking.

III

Islamic Constitutional Theory and Modern Times

Now the question can be considered, how far is it possible to implement Islamic constitutional theory in modern times? A majority of modern Muslim thinkers agree with their predecessor, Ibn Khaldun, that from the standpoint of Islam the State must be founded on spiritual principles. Declaring Pakistan to be an 'Islamic Republic' or calling her capital by the name 'Islamabad' would serve no purpose unless these outward forms serve as a means for the attainment of the inner substance of Islam.

Is it necessary that the Head of a modern Islamic State should be a Muslim or is such a requirement a mere 'outward form'? It has already been pointed out that from the standpoint of Islam the Head of State must be a Muslim mainly because he is obliged to perform certain purely religious functions. If Pakistan had been inhabited by Muslims belonging to only one sect of Islam, or if she was governed by a hereditary monarch professing the religion or belonging to the majority sect, then there would have been no difficulty in maintaining that the Head of State in Pakistan should be a Muslim (belonging to this or that sect). But in the circumstances, when, besides non-Muslim minorities, Pakistan is inhabited by Muslims belonging to numerous different sects of Islam (although the Sunnis predominate in Pakistan, they have so far refrained from claiming that Sunni Islam be declared as the State religion), and the Head of the State is to be elected on the basis of adult franchise (the population of Pakistan being 85 per cent

Muslim), it may well be asked: what is the sense in emphasising this qualification?

If the Head of State has to be a Muslim because he is obliged to perform the religious functions enumerated above, then is he to perform these functions in accordance with the precepts of Sunni Islam or of Shia Islam? Anyway, if he is not obliged to perform the religious functions (so far the Heads of State in Pakistan have not performed any of these functions, although all of them were Muslims) then obviously an emphasis on this qualification would imply the retention of merely another outward form.

According to Islamic constitutional theory Absolute Sovereignty over the entire universe belongs to God; but since Man has been appointed God's Representative (*Khalifah*) on earth, earthly sovereignty vests in him as a sacred trust from God. (It is only in this sense that an Islamic State claims to be sovereign). A State which is established for the purposes of realising such ideals as 'equality, solidarity and freedom' in 'a definite human organisation'¹⁰ cannot be other than democratic or republican, though it may assume the form of a parliamentary cabinet or presidential system. Similarly it is essential to incorporate Fundamental Rights in a modern Islamic constitution, not only because they are in conformity with the spirit of Islam, but because each of them could be directly traced from the *Quran* and the *Sunnah* (the practice of the Prophet).

Medieval Islam seems to have produced three distinct views on the Universal Caliphate (or Imamate). These are: that it is a Divine institution and therefore indispensable; that it is not obligatory but only recommended by God and therefore a matter of expediency; and that there is no need of such an institution, for the community can manage its affairs by itself (the last view was held by the *Khawarjites*).

Ever since the Turks abolished the Caliphate (in 1924), modern Islam has regarded the formation of legislative assemblies in Muslim countries as a return to the original purity of Islam and thus it seems to have adopted the *Khawarjite* view. Iqbal maintains that legislative assemblies in Muslim countries should perform the function of *Ijma* (the Consensus of the Community) and re-interpret the law of Islam in the light of contemporary experience and the altered conditions of modern life. He says: "The teaching of the

¹⁰ *The Reconstruction of Religious Thought in Islam*, 154.

Quran that life is a process of progressive creation necessitates that each generation, guided but unhampered by the work of its predecessors, should be permitted to solve its own problems".¹¹

Since Iqbal was aware that a present-day Muslim assembly would obviously consist of members who possessed little knowledge of the subtleties of Islamic law, he recommended that the *Ulema* should form a part of a Muslim legislative assembly and help and guide free discussions on questions relating to law. But Iqbal was, at the same time, conscious that such an arrangement was 'dangerous', therefore he suggested that if it was adopted at all, it should be only a temporary measure. "The only effective remedy," he said, "for possibilities of erroneous interpretations is to reform the present system of legal education in Mohammadan countries, to extend its sphere, and to combine it with an intelligent study of modern jurisprudence."¹²

It has already been noted that the Constituent Assembly of Pakistan rejected the proposal for the appointment of a Board of *Ulema* which should supervise the legislative activity of the National Assembly, and thus upheld the freedom of the National Assembly in making laws for the country. When it is generally accepted that in Islam the spiritual and temporal are not two separate domains; that the nature of an act, even if secular in import, is determined by the attitude of mind with which the agent does it; and that each generation is to solve its own problems, then there is indeed no reason why the power to interpret the law of Islam should not be given to the National Assembly.

However, the existing judicial structure could be incorporated in the modern Islamic Constitution of Pakistan with certain modifications. For example, those judges of the Supreme Court who have been specially trained in the knowledge of the principal sources and branches of Islamic jurisprudence and who have also been trained in the application of the rules derived from those sources to modern problems, could be given special powers to determine, after such hearing (of the *Ulema* as well as the Experts) as they think fit, whether the legislative activity of the National Assembly was in conformity with or repugnant to the injunctions of Islam. Any problem of Islamic law which requires a re-interpretation in the light of modern experience could be put to the judges by the

¹¹ *loc. cit.*

¹² *ibid.*, 176.

National Assembly through the President in the form of a Reference; and they could report their opinion on such matters to the President.

'Hisba' in Modern Times

Shortly after Pakistan came into being, some of the religious enthusiasts, impelled by their zeal for puritanism, attempted to assume the *Hisba* jurisdiction for themselves and went about the streets of the big cities of Pakistan imposing the 'religious discipline' of Islam on Muslim citizens. In Anarkali Bazaar, a business centre of Lahore, a religious enthusiast with a pair of scissors in his hands, attempted to clip the hair of Muslim women who had 'dared' to come out unveiled. In the walled city, a few Muslims who were seen eating in public during the month of Ramazan, had to pay heavily for their infringement of a 'Right of God'. Their faces were blackened, they were made to ride on donkeys and were taken around the city by a group of religious enthusiasts.

Although such incidents were few, and the law of the land soon managed to control and check this trend, it appeared in a more dangerous form in 1953 when a group of *Ulema* held an All-Pakistan Convention at Karachi and demanded that the Ahmadis (a sect regarded as heretical by most Muslims) be declared as non-Muslims and therefore a minority community, that the then Foreign Minister (who happened to be an Ahmadi) be dismissed and that Pakistan be made an Islamic State.

These demands, although outwardly of a 'religious' character (and perhaps in the opinion of these *Ulema* motivated by no other desire than to suppress the growth of heresy) were really the result of a conspiracy on the part of the Ahrar (a religio-political organisation which had, during the independence struggle, sided with the Hindu Congress and opposed the establishment of Pakistan) to regain their lost political prestige. Numerous religious organisations joined the Ahrar; meanwhile some of the members of the Provincial as well as the Central Cabinets supported the Ahrar demands, keeping in view their own political ends.

These *Ulema* passed a 'Direct Action' resolution and gave an ultimatum to the Government that if their demands were not conceded, they would launch an agitation. Khwaja Nazim-ud-Din,

the then Prime Minister, tried his best to dissuade the *Ulema* from starting an unconstitutional campaign for the enforcement of their demands. He pointed out that such an agitation would lead to bloodshed. Furthermore, he argued that the Constituent Assembly had passed an Interim Report regarding the basic rights of all the citizens of Pakistan (on October 6, 1950) under which every qualified citizen of Pakistan was eligible for State service irrespective of religion, caste, race or country of birth, and every citizen was granted liberty of conscience and freedom to adhere to any religion. But the *Ulema* were not prepared to listen to the reasoning of the Prime Minister. As a result they were arrested and the agitation followed shortly after. The big towns of West Punjab became scenes of rioting and arson; complete lawlessness prevailed in Lahore until the troops were called in and martial law was proclaimed. The agitation was suppressed by rifle fire and hundreds lost their lives for a cause which, according to them, was 'religious'.

There are other spheres in which certain 'religious taboos' have been maintained in Pakistan. Although poetry and other forms of literature are now generally accepted as part of Pakistani culture, zeal for puritanism has hindered the development particularly of fine arts (painting, sculpture, music, singing, dancing and all varieties of dramatic arts) in spite of Government patronage. The laws preventing the consumption of alcoholic liquor, prostitution and gambling are also unusual and peculiar. Although these laws attempt to effect a balance between individual liberty and collective order, they fail to achieve their real object and tend to create a farcical situation.

The 'liberal' interpretation of Islam as put forth in the writings of Iqbal emphasises the development of free and creative individuals as the basis of a good society. He maintains that the realisation of the moral ideal presupposes the freedom of the human will. Hence the 'liberal' view of Islam will maintain that the younger generation should be educated to understand and appreciate the significance of Islamic moral standards; it also assumes that adult Muslims should be regarded as capable of regulating their personal moral conduct (including the freedom to adhere to any sect or to adopt any interpretation of Islam which they may choose) without external interference on the part of the State. In the past, although theoretically *Hisba* has been considered part of the Islamic State,

there is no evidence that it has been regularly and strictly enforced. In the modern Islamic State there need be no *Hisba* as such, but positive steps should be taken by the State to guarantee adequate religious education for all Muslim citizens. The State must also encourage the development among the Muslim citizens of a more mature religious outlook so that their narrow and distrustful attitudes could be transformed into a broad tolerance and a genuine passion for righteousness.

It has already been shown that the spiritual and temporal are one in Islam. In Mughal India, the Sovereign appointed the judges (*Qazis*) who were empowered, besides administering criminal and civil justice, to preach, to lead the congregational prayers, to give sanction to the marriage tie, to look after the mosques and religious endowments (*Awqaf*). The British, however, abolished this institution in 1864. From that time onwards the above functions have been performed by unauthorised, self-appointed religious leaders (*Mullahs*). Although these religious leaders rendered great service in keeping the community together in the period of foreign domination, they are now an obstacle to progress since their influence tends to encourage a very narrow and confined interpretation of Islam. The modern Islamic State, therefore, has the responsibility of making provision for religious education, training, appointment and salary of preachers, missionaries and the leaders of public worship (the *Imams* of the mosque), and the maintenance of the mosques and religious endowments etc.

As has already been stated, Islam makes it obligatory upon the Muslims not only to tolerate non-Muslims but also to protect them and to defend their places of worship. Ideally speaking a sincere believer in one faith ought to respect the sincerity of the believer in any other faith. In Iqbal's terms, the Muslims should be aiming towards a much fuller and more complete expression of 'the hitherto partially revealed purpose of Islam'—that 'spiritual democracy', which Iqbal regards as 'the ultimate aim of Islam'. The modern Islamic State, therefore, should offer more security to believers in other faiths than a secular State.

The revival of *Ijtihad* is the major problem facing Muslims concerned to articulate a liberal and progressive interpretation of Islam. The essential prerequisite of such a revival is the establishment of centres for teaching and research in the law, history and theology of

Islam in the light of modern experience and the rapidly changing conditions of modern life. The modern Islamic State should establish such research centres, reform the institutions of legal and theological instruction, and encourage the holding of seminars which deal with the questions of relating traditional Islamic values and practices to contemporary problems.

IV

It has already been stated that contemporary Muslims differ in their views as to the nature of the Islamic State. These differences are caused mainly by differences in presuppositions and attitudes of mind. This is the basic reason for the present confusion on this issue. The following are some of the factors which lead to this confusion and impede the realisation of the Islamic State in Pakistan.

(1) *The Muslim Masses*

The essential concern of the masses is to obtain the basic necessities of life which are at present hard to come by. In religious matters, owing to illiteracy and credulousness, the common people in the rural areas are dominated either by the Pirs and Sufi orders or by the *Mullahs*. Hence their view of Islam is static, distorted and medieval. Change of any kind from the traditional beliefs, practices and customs is therefore unthinkable to them. In the towns the middle class Muslims tend to be smug and self-righteous. A majority of the Muslims who took part in the anti-Qadiani riots in West Punjab came from this class. Such Muslims are prompt to declare others unbelievers; their fervour thus takes a negative form, rather than the positive form of concern with making themselves good and virtuous Muslims. This negative attitude which is engendered by self-righteousness and smugness permeates all classes in all parts of the country and hinders the dissemination of a liberal and progressive understanding of Islam.

(2) *The Intelligentsia*

The term of intelligentsia is used in a broad and general sense to include the theologians (*Ulema*) and the Western-educated

intellectuals. Both have been academically discussing the nature of the Islamic State for many years, but have approached the question with absolutely different attitude of mind.

Hardly any of the Muslim theologians in Pakistan have Western education. Therefore they have no clear understanding of contemporary problems. Most of them have been trained in the traditional way. They live in the past, retreat from the idea of change, reject history as a record of experimentation in applied ethics, and are unable to understand the necessity for a reconstruction of Muslim religious thought. They turn their backs on the future, shut their eyes to the demands of modernity, and live and breathe in a constricted medieval world. This attitude tends to make their approach to all problems idealistic and in a way romantic, but wholly impracticable. In the eyes of Iqbal, the Muslim theologians were intellectually stagnant.

The modern (Muslim) intellectual, a product of secular educational institutions, who has been brought up in a borrowed (Western) tradition of culture, takes great pride in applying 'scientific reason' to contemporary problems. Since he is fundamentally a rootless man, his approach to the problem of the Islamic State is curiously mischievous. He is thoroughly academic, and loves to define concepts in categorical terms. If the question of implementing the Islamic State is raised before him, he will innocently demand the definition of Islam. If he is told that Islam means belief in God's Unity and Muhammad's Prophethood, he will again ask, 'Would you be so kind as to prove the existence of God to me?' Now, here, he thinks, his triumph begins for it is obviously impossible to prove the existence of God in rational terms, whether the God of Islam or of any other religion. The intellectual therefore scornfully rejects everything that pertains to Islam and regards the Islamic State as synonymous with bigotry and fanaticism. His only contribution to positive thinking is usually his emphasis that the State should be founded on Pakistani nationalism. He fails to realise that once the principle of nationalism is conceded, it would automatically imply conceding the principle of regionalism. This would lead to the disintegration of Pakistan. The ideology of Islam on which Pakistan was founded is the only basis for unity and solidarity among the people of Pakistan who speak different languages, descend from different racial and cultural stocks and are geographically non-contiguous.

Hence the intellectual either looks towards the West for inspiration (without having any deep understanding of the real problems of the West) and is attracted by secularism, capitalism, atheistic socialism etc., or else he simply drifts as a nihilist, feeling frustrated by the emptiness and lack of sense of purpose in his life.

There is a liberal and moderate tradition of approaching theological and ideological problems which derives from the time of Syed Ahmad Khan¹³ and comes down to Iqbal. These reformers influenced the minds of the people and directed their transition from medieval to modern ways of thinking. It is the tradition established by these reformers which eventually led to the political and cultural emancipation of the Muslims in the Indian sub-continent. Such men combined in their attitudes an awareness that the basic principles of Islam must be preserved, with a recognition of the value and importance of modern ways of thinking. Although the ideas of these liberal and moderate reformers have withstood the test of time, and the trend of history is moving in the direction which demands the fulfilment of their ideas, there is at present, unfortunately, no organised and coherent liberal movement in Pakistan. The liberalism which exists is confined mainly to the upper classes and tends to concern itself with matters of tolerance and personal morality rather than with a vigorous assertion of the need for social justice and reform.

(3) *Politicians*

Although there are no 'politicians' in power at the moment they have been very influential in the past in determining the form of the Islamic State, and will doubtless be influential again when they return in the future. Gibbon believed that to a historian all religions are false, to a philosopher all religions are true, but to a politician all religions are useful. The experience of the past ten years has clearly shown that most politicians have laid emphasis on the Islamic State in their speeches, statements etc. as a matter of policy, but so far as the problem of implementing the Islamic State is concerned, the people have been offered virtually nothing.

¹³ Syed Ahmad Khan was one of the earliest 'modernisers' of Islam. His movement began after the British suppression of the rebellion of 1857, and was associated with the Muslim University at Aligarh.

The object of these politicians was to remain popular in the eyes of the people. They fully understood the psychology or the mental chemistry of the Muslim masses. They knew that the masses loved to be reminded of Islam, its glory in the past, and so on, but that they did not like to be told of their shortcomings and failings. And similarly they knew that the masses were too indolent and lazy to interest themselves in any change of religious outlook. Hence these politicians' emphasis on Islam was only verbal; they declaimed with passion on the virtues of religion because such was the popular mode of oratory.

(4) *The Press*

The vernacular press in Pakistan takes its origin from the Khilafat days when its circulation depended on raising the slogan, 'Islam is in danger'. The readers of the vernacular press belong to the Muslim middle class. (The upper classes read the English newspapers). A large portion of the vernacular press plays on the puritanism and self-righteousness of the middle class. Hence these papers are opposed to any liberal and progressive interpretation of Islam, and by exploiting the techniques of sensationalism and inciting the prejudices of the people, they make any attempt to disseminate liberalism immensely more difficult. Furthermore, it is against their vested interests to support liberalism because to adopt attitudes of tolerance and fair-mindedness would lead to a serious drop in their circulation.

(5) *Lack of Educational Facilities*

Although the recent Education Commission Report recommends the dissemination of a liberal and progressive interpretation of Islam and a revolution in the attitudes of the people, there do not yet exist adequate facilities to do the necessary research into the problems involved in relating Islamic values to contemporary problems. There is almost a complete dearth of adequate books on this subject. The dissemination of a liberal interpretation of Islam will require intensive efforts to train teachers and to implement effective methods of instruction. As the Education Commission Report says, a revolution in attitudes cannot be accomplished by fiat.

V

Much of the contemporary discussion about the Islamic State in Pakistan, whether conservative or nominally liberal, is in fact utopian. Its method is to define in abstract terms the characteristics of the ideal Islamic State and to say nothing practicable about the implementation of the ideal. Such discussion generally ignores entirely the essential question which is the poverty, degradation and suffering of the masses.

It is only too clear that conditions in Pakistan—the feudal landlords, the Westernised intellectuals, the professional holy men, the medieval religious leaders, and the alienated masses—resemble in many ways conditions in Russia before the Revolution. The static religion, and the ineffective liberalism of Russia disappeared in smoke before the organisation, discipline and coherent purpose of Lenin.

Iqbal contemplated the phenomenon of Lenin. In his poem, *Lenin before God*, the Muslim poet spoke of the destruction wrought by Lenin as a kind of necessary judgment on the sterile religion, blood-sucking capitalism and imperialism of the West. The Muslim poet also saw the possibility that if the Muslims continued to accept Islam in the form of a religion which teaches fatalism, keeps the poor oppressed, justifies social inequality, or rejects the idea of transforming conditions in the material world, then the explosive force of the alienated masses would swell up like a flood, break its confines and find its own direction.

The alternative to this possibility, in Iqbal's opinion, was an interpretation of Islam which emphasised, instead of a static utopian system, a view of history as a process. Muslims within history should always be moving towards a more perfect State and thus be always developing more adequate structures of social, economic and political justice. The adoption of the symbols of the Crescent and the Star on the national flag represents this very aspiration of the Muslim community—the State to achieve gradually (just as the Crescent moon passing through its numerous phases, eventually achieves) perfection under the guidance of God's Law (symbolised on the national flag as the Guiding Star).

DR. IQBAL: Muslims are not anti-nationalistic but they accept nationalism in a definite sense. They have an idealistic conception of Islamic solidarity, which I have illustrated historically in my paper. It is not incompatible with a high ideal of international friendship. Indeed, to Muslims, secular nationalism has come to be known as idolatrous nationalism and they believe that wars have sprung from the deification of this purely political ideal. The concepts of equality and social justice are basic in Islam.

The 1956 Constitution was hypocritical and vague in its framework. The group of politicians who followed Jinnah were disappointing compared to their predecessors and the masses of people were alienated from their leaders. As Ayub Khan had said: "We failed to define that ideology. . . . Also in our ignorance we began to regard the Islamic ideology as synonymous with bigotry and theocracy, and sub-consciously began to fight shy of it."

At present there is martial law, but there is a pre-constitutional arrangement for 'basic democracies', which brings an element of consent into the prevalent system. The constitution is in the making. Personally I feel that I have more liberty than under previous regimes—at least I feel more secure.

Beyond this I shall not add to my paper, which in any case is like the intestine of the Devil, it has no end.

PROF. L. C. WEBB: Many Asian countries are going through a second phase, in which we are feeling the ground-swell of traditional forces, and especially of religions. By concentrating on constitutions, it might seem that the religious factor was becoming less important. But is this so? In Ceylon, for example, there has been the Buddhist revival, which is making a mess of previous political calculations.

The religious atmosphere of Pakistan is complex. In West Pakistan, there is something of the climate of the Middle East, whereas in East Pakistan, there is the more sober atmosphere of a country like Malaya. This might be said to illustrate the dampening effect of humidity on religion. There is also a search going on for a form of Islam that will be compatible with modern institutions, with the

unity of the State. Pakistan under Ayub Khan is from this point of view not unlike England under the Tudors. Islam has been handicapped by a set of fossilised political ideas.

There is an inherent tendency in all Islamic parties towards fission. This is understandable where the population is 80 per cent illiterate and the prestige of any literate man is great, however ill-informed. In Iqbal's book *Ideology of Pakistan and its Implementation*, he proposed that there should be a Ministry of Religious Affairs to take over the affairs of the mosques and religious foundations, to appoint and pay *Imams*, supervise religious education, and so on. This would probably reduce sectarianism.

All the same, it will be difficult to restore vitality to the Islamic ideal in the context of a modern State. Christendom has emerged with a structure of government within which the State tends to be regarded as of its nature secular and religion as a private affair. This is much harder for Islam, with its rejection of secondary causes. As Abul 'Ala Mawdudi, founder of one of Pakistan's most influential sects, put it: "The sun, the moon and the stars are . . . all Muslims", because they all obey God. Such Muslims bring the same style of thought into politics, and can only see an Islamic State as a theocracy, in which man's only duty is to obey the law.

PROF. MORRIS-JONES: I wish to compare the situation in Pakistan as described by Iqbal with that in India. One difference is that no Indian parties have been completely geared to religion. Secondly, the despair and distrust which Pakistanis feel towards the pre-1958 regime is apparent also in India. The difference is one of degree only. In Pakistan the disgust appears universal. Is there something about Islam which makes it less willing to tolerate a distinction between profession and practice, to accept and bear with incoherence and incapacity, which the Indians appear willing to do?

PROF. STONE: I would like to ask Dr. Iqbal, first, what is meant by 'idolatrous nationalism'? And what is the Islamic view of the national state, which has been summarised in terms of 'cultural emancipation' and 'territorial specification'? Do not these two add up to 'idolatrous nationalism'? My second main question is, how far would an Islamic republic of Pakistan be a theocratic state?

DR. IQBAL: Territorial nationalism is accepted by the Muslims only for the purpose of identification. Nationalist values must under no circumstances over-ride human values. This is how a Muslim feels. The Muslim concept of nationalism is, therefore, more idealistic than the Western concept. Secular (or idolatrous) nationalism brought forth Fascism in our times. Its narrowness and inhuman tendencies can be witnessed in the Union of South Africa and even in some parts of the United States.

Christians, dominated by a tradition of personal religion and Church organisations, tend to see the Islamic State as a theocracy. But to Muslims it never means a theocracy for there are no priests in Islam who may run the state. A modern Muslim state could conceivably exist even if its head was a Hindu for the Muslims are free to elect anyone as the head of their state. In Pakistan at the moment the Chief Justice of the Supreme Court, Mr. Justice Cornelius, is a Roman Catholic.

MR. D. SINGH: I am not clear how Dr. Iqbal's exalted view of an Islamic State can be reconciled with traditional Islamic law. Under the 1956 Constitution, it was provided that law would be linked with Islamic law as revealed in the *Quran*. If, for example, Pakistan were to introduce a new law of divorce, how would it be kept consistent with the *Quran*? How would the early Muslim texts be interpreted?

MR. JUSTICE ELSE-MITCHELL: Surely a system of judicial review such as Dr. Iqbal envisages must ultimately lead to divergence between the law authorised by the courts and the traditional law of the *Quran*.

MR. HINDLEY: I can attach no meaning to the idea of an 'Islamic State'. Two aspects of Islam have some applicability to politics. First, Islam is not democratic; second, it has no supreme interpreter like the Pope. I believe it is impossible to reach a definition of an 'Islamic State' that would be acceptable to more than a handful of Muslims. Anyone may define such a State as he wishes, and in the absence of a hierarchical 'Church' in Islam, there is no 'Muslim Pope' to lay down which definition is the correct one.

DR. IQBAL: I think that the whole approach to Islam has been medieval; the Muslim is always thought of as a man with a knife. There is no great difficulty about the interpretation of the *Quran* to develop a law suited to a modern State. Over three centuries there

have been attempts to bring Muslim law into line with modern requirements. A Muslim State can be very tolerant. The old Moghul rulers did not interfere with the social system of India and impose ideas of Islamic law. Only if minorities are preserved, can the true ideal of the Islamic state be attained and Muslim ideals of respect for others be upheld.

Donald Hindley

A NOTE ON ISLAM AND POLITICS IN INDONESIA

ALTHOUGH ABOUT 90 per cent of Indonesia's 95 million inhabitants are classified as Muslim, Islam there has provided no guide for political action, nor has it welded together a political force of lasting national importance. In order to understand this failure, it is necessary to examine the history of the Islamisation of Indonesia, the nature of Islam itself, and the political situation in Indonesia since the transfer of sovereignty in December 1949.

The last Hindu kingdom in Java did not fall until 1478, while towards the end of the sixteenth and the beginning of the seventeenth centuries there arose in Central Java the nominally Muslim sultanate of Mataram which reasserted Javanese philosophy and ritual. The local agents of Muslim orthodoxy were purged because they competed for the loyalty of the population. The Dutch, too, were concerned to curb the influence of the Muslim leaders. Indonesian government officials were discouraged from a strict observation of religious duties, religious teachers were licensed, and severe restrictions were imposed on the import of religious literature in order to keep out political influences. In short, within Java two sub-communities were formed: that of the *santris*, the devout Muslims, and that of the *abangans*, those who were nominally Muslim but who maintained a basically animistic and Hinduistic set of beliefs and ritual. Furthermore, a majority of the Indonesian government officials, those whose children had the opportunity of higher education and who were to constitute an important part of the nationalist leadership, were not *santris*.

The dichotomy between the *santris* and the *abangans* was not marked until the present century when the Islamic reform movement reached Java. This movement was aimed primarily at purging the nominally orthodox Muslims of syncretic accretions. Indigenous, non-Islamic phenomena were rejected, such as traditional dancing

and puppet plays, gambling, and even traditional clothing and music. Resentment and fear of the orthodox Muslims were heightened among the *abangans*. Today the *santris* and *abangans* are self-conscious, often antagonistic, sub-communities.

The 1955 general elections showed that the Muslim political parties received about 40 per cent of the votes in Java, and somewhat more in Indonesia as a whole. If the Muslims had been united, they would have formed, perhaps, the major political force in Indonesia. But they were not. The reason for their division lies in the nature of Islam itself. Islam has no 'Church', no supreme interpreter. Thus the devout Muslims in Indonesia are fragmented in their religious and political interpretation of Islam. In the political sphere, which concerns us at present, many of them are members of secular parties, even of the Communist Party, believing that by being so they are implementing what they consider to be the political message of Islam. Most devout Muslims, however, support one of the avowedly Muslim parties. The history of the Muslim political groups is one of recurrent squabbles and divisions. At the time of the 1955 elections, there were four Muslim parties worth noting: Masjumi (by and large the representative of the reformist groups) which received 21 per cent of the total votes; Nahdatul Ulama (representing the adherents of the four main schools of Islamic law) which received 18.4 per cent; PSII, which received 2.9 per cent; and Perti, a small Sumatran party, which received 1.3 per cent.

Although the Muslims are politically divided, one or each of the avowedly Muslim political groups might have used Islam in order to produce a concept of an Islamic state. This has not occurred. The ordinary party programmes of the Muslim parties are similar to those of the secular parties, and are based upon Western humanist traditions, while the bankruptcy of their religion as a guide for creating a modern State was clearly demonstrated in the Constituent Assembly debates from 1956 to 1959. Certainly they united in opposition to President Soekarno's Pantjasila, but on the other hand they were unable, separately or collectively, to formulate what they meant by an Islamic State. Beyond the desire for a stipulation that the President of Indonesia be a Muslim and that the State should be based on 'the teachings of Islam' (undefined), nothing concrete emerged. Their predicament was not unique, for what religion has been used successfully as the basis of a modern state?

A brief survey of the political situation since the transfer of sovereignty in December 1949, shows how the Muslim parties have been excluded from a major role in the government of Indonesia.

In 1950 it was widely believed that Masjumi (which until 1952 included Nahdatul Ulama) would win a clear majority in the event of general elections. Masjumi, with the adherence of the rural and urban *Ulamas*, was the only party at that time with a nation-wide and effective means of mobilising mass support. The principal Masjumi leaders also were inclined to be pro-Western and to consider the revolution as largely completed by the transfer of sovereignty. The other political forces closed their ranks through fear of a Masjumi victory and through their commonly-held belief that the revolution was a continuing social, economic and political struggle against the Western imperialists. The non-*santris*' fear of Muslim fanaticism was strengthened by the bloody revolts led in the name of Islam in West Java, Atjeh and South Sulawesi.

The Nahdatul Ulama broke away from Masjumi in 1952 and, like PSII and Perti, showed itself willing to co-operate with the anti-Masjumi forces. A loose alliance was formed of PNI (the nationalist party), the Communist Party, Soekarno, Nahdatul Ulama and PSII. Masjumi was first excluded from government office in the middle of 1953. By the time of the general elections in September 1955, the non-Muslim parties had developed their organisation to the extent that they could win 56.5 per cent of the votes. The end result of Masjumi's exclusion from a major role in government was the participation of several of its leaders in the PRRI-Permesta rebellion that broke out in February 1958. In August 1960, Soekarno ordered the dissolution of Masjumi.

Why could PNI, Soekarno and the communists use NU, PSII, and Perti in the process that led first to the isolation and then to the rebellion and destruction of Masjumi? They could because there was nothing to bind the so-called Muslim parties tightly together. Just as it failed to provide the Indonesian Muslims with a guide to a State constitution, Islam also failed to provide them with a guide for political tactics or government policy. If Islam could not provide unity on religious matters, how could it on political ones? In the absence of a hierarchical 'Church', there was no one with the authority to settle disputes or evict heretics. In short, the addition of

the adjective 'Muslim' to a political party had little effect on its political behaviour.

NU, PSII and Perti leaders have declared, and they may believe genuinely, that their participation in any government, even an anti-Masjumi one dominated by non-Muslim forces, gives the Muslims some influence in government decision-making. In the event, this has not proved so. Because of their generally low level of formal education, their political weakness, and their lack of political expertise, the NU, PSII and Perti leaders have been given mainly menial cabinet posts. They have carried little if any weight in the formulation of government policy.

To summarise: Indonesia has the largest Muslim population of any country. Islamisation has been uneven in its intensity, leaving many nominal Muslims outside and often antipathetic to the influence of the Muslim religious leaders. And for the devout Muslims, Islam has provided neither the basis for a modern State nor the cohesion with which the avowedly Muslim groups could have become a major political force in the country.

J. A. C. Mackie

INDONESIAN CONSTITUTIONS, 1945-60

INDONESIA HAS been governed under three different constitutions since it proclaimed its independence in 1945. During the years of revolutionary struggle against the Dutch, 1945-9, the Republic based its authority on the 'Proclamation Constitution of 1945', drafted just before the Japanese surrender and promulgated on August 18. It served as a framework of government during the uncertain years of revolution and has again been in force since July 5, 1959. It is characterised by a powerful, almost unlimited executive, which cannot be overthrown by the legislature. (Hence, amongst other reasons, its restoration in 1959). The federal constitution of the shortlived Republic of the United States of Indonesia (R.U.S.I.), created by the Round Table Conference which ended the Dutch-Indonesian dispute in late 1949, lasted only until the transformation into a unitary state in August 1950. Its drafting shows strong Dutch influence, which also coloured the Provisional Constitution of 1950-59, since the latter differed from it only in minor respects, except on the one matter of rejecting the federal structure. (The constitutional framework of federalism was as vaguely defined as it was shortlived and it is not worth further elaboration here.)

The Provisional Constitution imposed a unicameral parliamentary system of responsible government, in which political parties played a dominant role. Among the reasons for the abandonment of 'liberal democracy' in 1959 was undoubtedly a widespread feeling that party politics within this framework were only leading to political deadlock. However, the 'rules of the game' were observed fairly scrupulously from 1950 until normal parliamentary politics began to go into eclipse in March 1957 as a result of promulgation of a State of Emergency, the political intervention of regional military commanders, the President's incursion into active politics and the unrestrained increase in budget deficits.

A Constituent Assembly had been foreshadowed in all three constitutions but could not be elected until December 1955, shortly after the first general elections for the House of Representatives. It met in November 1956, but by the end of 1957 it was clear that no agreement could be reached over the issue of an Islamic or *Pantiya Sila* (i.e. secular) State. Although the two Islamic parties were vague about the precise structure of an Islamic state and the immediate point at issue was merely the preamble to the constitution, they were able to prevent the two-thirds majority required to settle it. A more substantial disagreement loomed in regard to the choice between a federal or unitary state and a bicameral or unicameral parliament, since the former was preferred by elements in the Masjumi Party which drew its support largely from regions outside Java. But before this issue came into the open, the Government in February 1959 proposed as an alternative course that the 1945 Constitution be restored: it coupled this recommendation to the Constituent Assembly with a compromise formula on the question of the Islamic State, designed to win over enough Muslim votes to obtain the two-thirds majority. However, at the last minute, one of the Muslim parties in the government, the Nahdatul Ulama, decided to oppose the government's proposal, which was defeated. The War Administrator under Martial Law then proclaimed a ban on political activities (since lifted, although not fully), the Constituent Assembly was wound up and on July 5 the 1945 Constitution was promulgated by Presidential Decree.

Legislative Power

(1) THE 1950 CONSTITUTION: Under the 1950 Constitution, legislative power was vested in 'the Government together with the House of Representatives' (Article 89). There was no second chamber. The government was "bound to ratify a bill which has been passed, unless the Government gives notice of having preponderant objections against this bill within one month after the bill has been submitted for ratification" (Article 94, *ii*). (This veto power was never used, nor, as far as I know, was the threat to use it employed against Parliament.) The House of Representatives had the right to submit or amend bills (Articles 90-91).

The government had a right to enact emergency laws on matters demanding immediate attention, but the regulations contained in

such laws had to be submitted to the House of Representatives at the next session; otherwise they lapsed *ipso jure* (Articles 96-7). This power was used extensively in 1950-51, but less frequently in later years when Governments occupied a weaker position in the House and the use of the power met with some criticism. The Constitution also permitted the Government to issue regulations (ordinances) and to delegate authority to other organs of the State to issue further regulations for carrying out the laws and ordinances (Articles 98-100). The manner of promulgating laws and ordinances was to be determined by law, but the Constitution provided no machinery for review of ordinances, Ministerial regulations or rules of lower authorities and Parliament appears not to have attempted to establish any formal machinery of supervision, apart from its set of committees mentioned below.

There was no limitation on the legislative power of the central government, as had been implied (although in the vaguest terms) under the federal constitution of 1949, except in the implicit reservation of constitutional changes to another body (Article 140). "The laws are inviolable" (Article 95, *ii*), i.e. not subject to challenge in court. Article 1, *ii* of the Constitution bracketed 'the Government' together with the House of Representatives as the instrument of popular sovereignty. The House attempted to exercise supervision over the executive through a series of committees corresponding to the various ministries; but while these did weaken the authority of Ministers, their primary function seems to have been an educational one for members and they had nothing like the influence of French or American legislative committees. However the House of Representatives was not able to attain a primary position in the governmental system as the instrument of popular sovereignty. Its most serious weakness, derived from a practical problem of financial control; budgets were generally presented so late in the year to which they applied that the House had no real opportunity to exercise effective control over expenditure. Budget deficits became endemic, always exceeding the estimated figure, and the accounting process fell so far into arrears that only provisional estimates of expenditure in any year were published; accounting control was left very largely to the Auditor-General's Department.

The composition of the House of Representatives under the 1950 Constitution was initially determined by the agreement establishing

the unitary Republic. The House included specified numbers of nominated members from former organs of the federal R.U.S.I. and the revolutionary Republican government, to an initial total of 236 members. The Constitution provided that it should consist of one representative to every 300,000 citizens and be chosen for 4 years by general election (Articles 56, 57, 59) on a basis of universal and equal suffrage exercised by secret ballot "or equivalent free voting procedure" (Article 35). The Electoral Law of 1953 provided for direct election through proportional representation; 16 electoral districts were designated and seats allotted according to population on a ratio of 1/300,000, with the stipulation that each district had a right to a minimum representation of 3 seats in the House of Representatives and 6 in the Constituent Assembly; 'remainder' votes were to be accumulated and distributed on a national basis. The franchise provided for universal suffrage (without literacy qualification) for all citizens over 18 and for married persons below 18.

(2) THE 1945 CONSTITUTION confines the House of Representatives to a purely legislative role. The sovereignty of the people is now exercised by a People's Consultative Assembly (Article 1, *ii*), which is to consist of "members of the House of Representatives, with the addition of representatives from the regions and groups, according to regulations to be determined by law" (Article 2, *i*). (The fact that this article can be interpreted to mean 'functional groups' contributes to its appeal to the President as a basis for Guided Democracy.) The People's Consultative Assembly is to meet at least once every five years; it is to elect the President (and Vice-President) and lay down the "general direction of State policy". An advisory Council of State, nominated by the President, has also been established (Article 16). A new electoral law amending that of 1953, which will make provision for representatives of 'functional groups' in the House of Representatives, has been foreshadowed but not yet (June 1961) published. The House of Representatives elected in 1955 continued to function under the new constitution from July 1959 to March 2, 1960, when it was dissolved by Presidential Decree: a new House was then nominated by the President, containing 130 members from political parties (several of which have not been represented), 35 from the Armed Forces and 118 from the 'functional groups'. The Provisional People's

Consultative Assembly was nominated by the President in August 1960, and met for its first session to lay down the "broad outlines of state policy" in November: it consists of 515 members.

The Constitution provides merely that the House of Representatives shall meet at least once a year; that its composition shall be laid down by law (Article 19); that laws require the approval of the House and, if rejected, may not be proposed again at the same session (Article 20); that members of the House have a right to propose bills—subject to the same limitation if the President refuses ratification (Article 21); and that the President has a right to issue ordinances in the place of laws, which must be submitted to the House of Representatives at the next session (Article 22). The President's frequent exercise of this quasi-legislative power (granted in Article 22, under the title 'Law-Substituting Ordinances') to avoid referring controversial bills to the House has further reduced the status of the latter.

Under the 1945 Constitution, legislative or quasi-legislative powers have been exercised in a variety of forms. At the top of the hierarchy come Presidential Decrees (*Penetapan Presiden*) under which the 1945 Constitution was proclaimed; a number of further Decrees have subsequently been issued, on the argument that they serve to *implement* the new constitution: they have embodied a wide range of basic decisions and have not been submitted to Parliament for approval. The decisions of the People's Consultative Assembly (*Ketetapan Madjelis Permusjawaratan Rakjat*) lay down the 'broad outlines of State policy' rather than legislative rules, but they are considered to embody principles which are binding on the Government and its agencies. Laws (*Undang-undang*) are still made by the House of Representatives in the usual way. The 1945 Constitution made no provision for Emergency Laws (*Undang-undang Darurat*) as did the 1950 Constitution, but it provided under Article 22 for 'Law-substituting Ordinances' (*Peraturan Pemerintah Pengganti Undang-undang*). At a level below legislation, government regulations (*Peraturan Pemerintah*), Ministerial orders (*Peraturan Menteri*) and Ministerial decision may be issued on the basis of a law. In addition, a new class of Presidential Regulations (*Peraturan Presiden*) is now used to implement Presidential Decrees.

During the period of revolutionary struggle from 1945–49, the status of the Central National Committee, which exercised the

powers of the House of Representatives, was higher than the 1945 Constitution implied, despite (or perhaps because of) the fact that it was a nominated body whose numbers were augmented at several stages by the Government to reflect changes in political alignments. Cabinet responsibility to the Working Committee of the Central National Committee was virtually accepted from November 1945 to February 1948, when a 'Presidential' Cabinet under Dr. Hatta took office. It is unlikely, however, that the 1945 Constitution will again be modified in this way, since the primacy of party politics which gave rise to the demand for direct Cabinet responsibility to parliament in 1945-48 has now been disavowed.

Executive Power

(1) THE 1950 CONSTITUTION (a) *The Cabinet*: The 1950 Provisional Constitution followed the Dutch model in making the Government responsible to Parliament. It did not specifically debar a Cabinet from attempting to govern without the support of a majority in the House of Representatives, but none attempted to do so nor could have succeeded long in doing so. The executive powers of the Government were laid down by Article 82 of the constitution in very broad terms: "the Government is to promote the welfare of Indonesia and especially to take care that the Constitution, the laws and other regulations are executed". (The extensive powers vested in the executive authority under legislation of the colonial era were taken over without substantial change, as also was the colonial civil service, which constitutes a control mechanism reaching down to the village.) Ministers did not have to be members of the House of Representatives and, if they were, they were not permitted to exercise their parliamentary functions while in office (Article 61, *ii*); they could intimate their wish to address the House to the Chairman (Article 64) and were required to answer questions from it either orally or in writing.

Relations between the Ministers, the President and Parliament were not entirely clear. Article 83, *ii*; "The Ministers shall be responsible for the entire policy of the Government; jointly for the entire policy, and each Minister for his part in the Government". The President and Vice-President were 'inviolable'. The right to dissolve the House of Representatives was vested in the President

(Article 84) and no reference was made in the constitution to the Prime Minister's rights in the matter; the issue hardly arose, mainly because it would have been physically impossible to hold an immediate election before the one general election in 1955. The dissolution power was one of the obscure points in the Constitution's definition of the President's relationship with the Cabinet; it has been held to blame for the weak position of the latter and the unusual degree to which the President acted independently of the Cabinet. Article 83, *ii*, quoted above, implied a sole Ministerial responsibility for Government policy; this would seem to have confined the President strictly to the role of mouthpiece of the Cabinet, except in fields where specific functions were allotted to him. (But it has been suggested that the President shared *authority* for legislation, although not *responsibility* for it, with the Cabinet, since the term 'Government' clearly referred to both in Chapter II, section 1 and Chapter III, section 1.) The Constitution did not specifically prevent the President from vetoing or withholding approval for legislation and on several occasions he did so to the embarrassment of cabinets which were uncongenial to him. A further cause of friction between some Cabinets and the President was the latter's refusal to accept the usual limitations of a constitutional head of state in the matter of public speeches and official tours; in these fields, the extraordinary status of President and Vice-President as pre-eminent 'national leaders' was approved in a Ministerial statement in Parliament in 1951. The relative weakness of the Cabinet is to be sought, however, in political factors and the charismatic appeal of the President, rather than in a purely constitutional explanation.

(*b*) *The President*: The Provisional Constitution provided that the President (and Vice-President, whose functions were not specifically defined) would be elected according to rules to be laid down by law; no such law was passed, as President Soekarno was already installed in office when the Constitution came into effect, under the terms of the political agreement establishing it; the method of his election and the prescribed term of office were left for the Constituent Assembly to determine. The President's powers were specified as appointment of cabinet formateurs and appointment of Ministers in accordance with their recommendations (Articles 50-51), the right to dissolve the House of Representatives, to conclude

diplomatic relations with other states, to award decorations, to grant pardons, the power to declare war and to declare a state of emergency (Articles 84, 87 and 120-129). He was also 'vested with supreme authority over the Armed Forces' (Article 127); in spite of strong arguments that this meant merely that the President exercised *nominal* authority above a Commander-in-Chief, his right to overrule the Minister of Defence in the making of appointments was invoked during the most celebrated political crisis of the 'fifties.

(2) THE 1945 CONSTITUTION: Under the terms of the 1945 Constitution, the President's executive powers are almost unlimited and Ministers of State, appointed and dismissed by him, are mentioned merely as assistants to him (Article 17). "The President of the R.I. shall be vested with executive power as laid down in the Constitution" (Article 4, *i*). He is also Commander-in-Chief of the Armed Forces. The constitution provides that he is to be assisted by a Vice-President, but none has been designated since July 1959. He is to be elected for 5 years by the People's Consultative Assembly by majority vote (Article 6, *ii*).

His authority is limited only by the stipulation that the concurrence of the House of Representatives is necessary for the enactment of legislation, for declaring war and terminating hostilities and for concluding treaties. (Articles 11 and 20, *i*). In circumstances of emergency, he is empowered under Article 22 to issue ordinances taking the place of laws, these ordinances being required to obtain approval by the House of Representatives in the following session, failing which they are to be struck out. If the President does not ratify a bill proposed by the House of Representatives (or if the House does not ratify a bill proposed by the President), that bill may not be proposed again during the same session (Articles 20-21).

Emergency Provisions

Since March 1957, Indonesia has been under Martial Law, initially under the provisions of a Dutch Ordinance of 1939 regarding the State of War and Siege, then under the Indonesian Law 74/1957, recently modified by Law-substituting Ordinance No. 23/1959. The earlier measures recognised two stages of 'siege' and 'war'; the latter establishes 3 stages of 'civil emergency', 'military emergency' and 'war emergency'. The Central War Administrator under

the 1959 law is the President/Commander-in-Chief, assisted by a council consisting of the Prime Minister, Minister of Defence, Minister for Home Affairs, Minister of Foreign Affairs, Chiefs of Staff of the 3 armed services and Head of Police. (Until December 1959, each armed service head acted as Central War Administrator within the territory controlled by his service: in effect, the Army Chief of Staff was the principal authority.) In a state of 'war' and 'military emergency', the Regional War Administrator is the local military commander, in conjunction with a council consisting of the *Kepala Daerah* (see below under Regional Government), local chief of police and regional executive council; the difference between "war" and "military emergency" is merely one of powers. In a state of "civil emergency", the civil *Kepala Daerah* is the Regional War Administrator. Under the 1957 law, the State of Emergency was to last only 6 months and the State of War only 12 months; it could be extended by Parliament. The Government was obliged to submit a report on all actions performed under the special authority granted by the Act (Clause 5, *iii*). Neither provision is contained in the 1959 version of the law.

The Judiciary

The judiciary has played almost no part in Indonesian constitutional processes, except in conducting criminal cases with a political background. No cases involving interpretation of the Constitution have been dealt with by the courts, although the Chairman of the Supreme Court has been called upon to give advice to the President on the legality of procedures he has adopted. The 1945 Constitution states simply that "the Judicial Power shall be vested in the Supreme Court and such subordinate courts as may be established by law": the organisation, competence and conditions for appointment and discharge of judges are to be laid down by law (Articles 24-5). The 1950 Constitution added also that appointments were for life, subject to an age limit which could be laid down by law and that judges could be dismissed or relieved from office as the law prescribed (Articles 78-9).

The law of 1950 governing the Supreme Court provides that judges are to be appointed by the President from candidates (at least 2 to each vacancy) proposed by the House of Representatives. Judges may be honourably discharged from office by the President

because of continued mental or physical illness or because of old age (60 is the prescribed retiring age unless the President gives a dispensation for reasons of State): otherwise they can only be discharged at their own request. They may also be dismissed if sentenced for committing a crime, if they become bankrupt, if they violate the provision against taking part in a case in which they have an interest or "because of improper or indecent behaviour or constant negligence in their duties". The two levels of lower courts for the Indonesian population have still the same general structure as in Dutch times, but the dualistic system of separate courts and legal codes for Dutch nationals has been abolished; the courts of first instance now exercise a wider jurisdiction also. *Adat* (customary) law is gradually being subordinated to the national code, whereas there was a tendency to preserve it in the later years of Dutch rule. On the other hand, religious courts still function, mainly in the sphere of family law, with a somewhat higher status than in colonial times.

Regional Government

The powers devolved by the central government to autonomous regional units, provinces and regencies (*kabupatens*) are not large and overlap those of the central government's hierarchy of local officials on inferior terms. This hierarchy, formerly the Dutch colonial service, extends down through 6 levels of authority to the village, each exercising control and supervision over the activities of lower organs on the basis of a mass of laws and ordinances accumulated over decades. 'Autonomous' institutions alongside the first and third level of this hierarchy (first established under the Dutch regime) are now based upon Law 1/1957, as modified by Presidential Decree No. 6/1959. Regional representative councils have been established at both levels, province and *kabupaten* or regency, and in theory are empowered to deal with all matters not specifically assigned to other authorities: in practice, there are few fields where the central government does not exercise prior authority, so that the principal powers exercised by the autonomous units are powers of *medebewind* ('sharing-in-government') in sharing administrative functions which the central government devolves to them. The central government's administrative hierarchy maintains a close degree of supervision to ensure that the decisions of regional

authorities do not contravene or encroach on the legislation or regulations of higher units.

The key figures in the system of regional government are the *Kepala Daerah* ('regional head') at the provincial and regency level. Until 1957, the *governor* and *regent* (both members of the central government hierarchy) bore this additional title and authority, since they also acted as chairmen of the provisional regional councils. Law 1/1957 provided that the elected chairman of the council should be designated *Kepala Daerah*, although the governors and regents continued to exist alongside them as administrative figures, with ambiguous status *vis-a-vis* the *Kepala Daerah*, but continuing supervisory powers over lower units of government. To remedy the 'dualism' of this system, Presidential Decree No. 6/1959 has restored central authority over regional councils by fusing the two offices again and providing that the *Kepala Daerah* shall be a servant of the central government chosen by the central government from 4 nominees submitted by the regional councils; but an escape clause permits it to choose from beyond these nominees if necessary. The unitary character of the system has been strongly underlined.

Financial relations are now regulated by Law 32/1956 which assigns to the regions power to levy certain taxes (insignificant local ones) as designated by government regulation, in addition to varying proportions of the yield from other higher-yielding, centrally-collected taxes, as specified by the central government from year to year: part of the receipts from the main revenue-producers (import and export duties) is also to be devoted to the regions, but in very vague terms. No clearcut formula for allocating sufficient taxing powers to make regional councils fully independent or for allocating their respective shares of available central government revenue has yet been put into effect and central government grants to the regions appear to be made on an *ad hoc* basis: most provincial budgets have derived 90 per cent of their revenue from central grants, although the figure ranges much more widely (down to 40 per cent and less in a few cases) for regencies.

Fundamental Rights

The Provisional Constitution contained a substantial catalogue of fundamental human rights and freedoms (Articles 7-34), ranging

from statements of legal rights guaranteeing equality before the law and just legal procedures to statements of aspirations such as the right to work, to education and to ownership of property. The legal status of these rights is indicated by Article 33; "limitations on the exercise of rights and freedoms described in this section can only be imposed by regulations as established by law, exclusively for the purpose of securing the indispensable recognition and respect for the rights and freedoms of others and to comply with the just requirements of public order, morality and welfare in a democratic community". An additional section of fundamental principles laid down that "the will of the people is the basis of public authority" and in broad terms prescribed freedom of religion and various welfare objectives. Article 38 *i*, which prescribed that "the national economy shall be organised on a cooperative basis", has given rise to much discussion as to its meaning.

The 1945 Constitution contains much shorter clauses of similar character, prescribing religious freedom, equality before the law, the right to work and to expect a reasonable standard of living, freedom of assembly, speech and Press and the right to strike, as provided by law (Articles 26-28). Legal rights are much less specifically spelled out than in the 1950 Constitution, being subsumed under the stipulation of equality before the law contained in the clause "All citizens shall have the same status in law and in the government . . ." (Article 27, *i*).

J. A. C. Mackie

ASPECTS OF POLITICAL POWER AND THE DEMISE OF PARLIAMENTARY DEMOCRACY IN INDONESIA

IN DISCUSSING a situation where constitutions are being made and altered and unmade, we are sooner or later led to reflect upon the relationship between the particular features of a constitution and the nature of the political forces it has to accommodate. Unless a constitution is in some sense tailored to the realities of political power within a community, there is likely to be deadlock or conflict. But we cannot briefly say much more than this about the relationship in general terms; our concepts are too vague, and political forces which can be contained within constitutional channels in one context might overflow them in a slightly different one. Yet if constitutions are to be worked out other than by chance in the turbulent polities of Asia, we need a more precise notion of which political forces matter, from this point of view. We also need to know more about the functional significance of constitutions. How far can they affect the way in which the more explosive forces within the community are going to work themselves out?

In Indonesia, the Provisional Constitution of 1950 was able to accommodate political activity for about 7 years according to 'the rules of the game'; then the rules began to be flouted and changed. Several years later, in July 1959, the government restored the revolutionary 1945 Constitution, because it was considered a more appropriate framework for political activity by the most influential elements in the country. The powers of the various instruments of government are now defined so broadly that one of the most basic functions of a modern constitution has been virtually abandoned—i.e. that of distributing and defining spheres of action so that some separation of powers is maintained and jurisdictional disputes between different bodies will not arise.

One of President Soekarno's purposes in rejecting 'liberal democracy' has been to create a concentration of authority that is not hedged round with constitutional limitations.¹ What purpose then does the constitution fulfil, if it does not act as a curb on types of political behaviour which are explicitly or implicitly condemned in 'liberal' constitutions? It is hard to conceive of any form of political organisation which would necessarily be ruled out by the wording of the 1945 Constitution itself; almost anything could be made compatible with it. (In fact, a parliamentary system embodying a principle of cabinet responsibility to parliament was welded on to it between 1945–47, although in broad outline a presidential system is clearly implied.) But the function of this constitution, or its usefulness to Soekarno, consists primarily in the fact that its general character (as the framework of a highly centralised regime) may be invoked as a justification for resisting tendencies of a 'liberal' or federal nature. The process of legitimising authority has always been peculiarly important in the Indonesian political tradition and it appears unthinkable to have *no* constitution at all, nothing that can be pointed to as a sheet anchor, even though an outsider may think that the anchor does not necessarily confine the ship of state in a very fixed position.² Thus the constitution has a certain legitimising or prestige-creating function, even though it does not significantly canalise or control the interplay of the most powerful political forces. Whether or not it will gradually develop this latter function is in the lap of the gods. One could only begin to approach a question of this kind after comparing the functional development of constitutional structures in similar polities.

It is not my aim in this chapter to explore questions of this kind analytically, but to reveal some of the forces that contributed to the

¹ It is revealing that the doctrine of separation of powers has been condemned as a 'liberal' institution by President Soekarno. (See his Independence Day address, 17 August 1960.) His emphasis on 'all pulling together towards one goal' derives from a desire to replace the 'oppositionism' of liberal democracy with a government that is strong enough to get things done.

² Indonesians use the word *pegangan* ('something to hang on to' from *pegang*—to hold) in various ways; it denotes something akin to the German *grundlage*—a philosophical basis from which one reasons. The *Dasar Negara* (philosophical basis of the State: in this case the *Pantja Sila*) may be thought of as a *pegangan*, equally the later ideological glosses of the President's 'Political Manifesto'. A constitution functions as a *pegangan* in the legal sphere, giving the justification or focus of reference needed for actions or laws.

collapse of parliamentary democracy in Indonesia and which would have to be taken into consideration in any attempt to constrain Indonesian political behaviour within a set of constitutional rules. My account of these forces will be expressed in terms of institutions which are entirely familiar to the Western political scientist. I do not mean to imply that these are the only relevant factors; the failure of parliamentary democracy certainly needs to be described to some extent in terms of the significance attached to exotic Western institutions in the very different socio-cultural environment. Writers with a sociological bent like Pye and Geertz have greatly enriched our understanding of what politics means in such circumstances, especially in regard to the crucial relationship between leaders and led.³ But there is a danger that the political scientists may be seduced too far into these tantalising new pastures before we have finished dealing with our own field of enquiry. The strains of the Western political and administrative structures which Asian countries have inherited from the colonial powers are to a large extent explicable simply in terms of the changing circumstances in which they are now being required to operate. My purpose here is to direct attention back to a number of fairly straightforward questions about what these familiar institutions are expected to do and what they are able to do in the circumstances.

The Failure of Parliamentary Democracy

The crudest type of explanation for the failure of parliamentary government in Indonesia puts it all down to lack of tradition, to inexperience or to the shortcomings of the administrative apparatus—all measured against some unspecified standard. To this it may be answered that democratic institutions *have* survived in circumstances of less than Athenian perfection—which are rarely attributed, in any case, to the countries from which they originated. Why not here?

³ Lucian W. Pye *The Policy Implications of Social Change in Non-Western Societies*. (Massachusetts Institute of Technology, Mimeographed, 1958.) The core of this work was published under the title "The Non-Western Political Process" in the *Journal of Politics*, Aug. 1958. Of the various writings by Clifford Geertz, the most stimulating contribution on political matters is his chapter on "The Javanese Village" in *Local, Ethnic and National Loyalties in Village Indonesia: A Symposium*, edited by G. W. Skinner. (Yale University, Cultural Report Series, Mimeographed, 1959.)

Going a stage further, we meet a different argument that Western political institutions may not fit the very different social and cultural environments of Asia: or that they must be tailored out of recognition to suit age-old traditions which have constituted the matrix of political activity until very recently. But again, there is no general rule to help us: in some Asian countries this adjustment has been made, in others not. We do not get very far by making debating points of this kind.

I believe we can throw more light on the matter if we approach the question from a different angle. Do the processes of political behaviour and the problems confronting governments in Asia appear to be compatible with the exercise of representative institutions, as bequeathed by the colonial rulers? To answer this, our attention must be directed first to the social and economic upheavals that have revolutionised Asian politics since the ferment of 'modernisation' began. It is not just a matter, in Indonesia, of the political instability and ineffectiveness of governments in the 'fifties. We must be able to go further back and explain why neither the cabinets nor the political parties of that period were able to remedy the ills which contributed to the ultimate demise of parliamentary democracy there. To do so requires that some attempt be made to analyse the forces which bear on that bafflingly elusive term, political power.

Summaries of the factors contributing to Indonesia's political instability by two of the foremost authorities on the country provide a useful introduction to the question at issue. Professor Kahin has written that: "Although there is a reasonable measure of agreement concerning the socio-economic role of the new state, there is no such consensus as to the proper nature of its political organisation . . . [parliamentary democracy's] waning attractiveness to Indonesians stems to some extent from unresolved conflicting ideologies and from their belief that its operation tends to exacerbate rather than bridge such differences. But the ineffectiveness of Indonesia's parliamentary system has been much more a consequence of irresponsible conduct by political parties having too little rapport with and responsibility toward the population. It has also stemmed from the failure to provide Soekarno with a clearly defined constitutional role approximately equivalent to his stature as a national leader, while nevertheless allowing him to exercise substantial power without responsibility. One source of these troubles has been Indonesia's

vague and ambiguous constitution—one which could confuse and frustrate the best-intentioned men in the world. Clearly, however, the dismal record of Indonesia's quasi-parliamentary system derives to a major extent from the conditioning of a colonial order which did so little to prepare Indonesians for self-government, much less for the practice of parliamentary democracy".⁴

One would not want to deny that the factors mentioned here, particularly the last one, are all relevant to the collapse of democracy. But this passage, taken as it stands and out of context, puts a somewhat misleading emphasis on purely political arrangements. It seems to imply that more suitable constitutional provisions might have been able to reconcile the political tensions, perhaps even make parties more responsible. Kahin later suggests that perhaps if Indonesia is to develop in a democratic direction, the traditional *Mufakat* procedure of attaining consensus on community decisions may have to be adapted to the nation's representative institutions. This is certainly to be hoped for, although one cannot foresee just how such a procedure could be formally grafted on to a regime which must now, by the nature of things, have a strongly authoritarian (not necessarily a totalitarian) element. Despite the outward appearance of consensus on socio-economic questions referred to by Kahin, one basic reason why a democratic regime is unlikely to give Indonesia economic progress and political tranquillity stems from the fundamental cleavage of economic and social interests, which underlies the ideological conflict. At some point, a strong authority must decide how these cleavages are to be settled. Up till now, established authority has not been strong enough to do so.

The difficulty of attaining 'political consensus', in fact, is listed by Dr. Feith as the first of the causes of Indonesia's political instability. "It is a country with a multiplicity of diverse and conflicting social interests and a wide diffusion of political power. Thus its leaders' strong will to unity must contend with centrifugal tendencies derived from both history and economic structure. Desiring determined government, they are restricted because of the existence of a great number of small power centres, each in a position to veto some types of government action. These facts lie behind the splintered and fractionalised system of political parties which has contributed so

⁴ G. McT. Kahin, "Indonesia" in G. McT. Kahin (ed.), *Major Governments of Asia* (Cornell University Press, 1958.) 573-4.

much to political instability".⁵ From this underlying weakness stem most of the difficulties in solving the numerous problems confronting Indonesia's governments. These have been comprehensively listed by Dr. Feith and may be briefly summarised in four classes.

The first class consists of structural problems Indonesia inherited from colonial times—population growth outstripping the rate of expansion of agricultural production; a lopsided orientation of the economy towards raw material exports; and the government's dangerous dependence on revenue from this fluctuating source. All these problems had been aggravated, moreover, by the physical and social damage done during the Japanese occupation and the armed revolution. Second, problems of detraditionalisation and social convulsion; the revolution uprooted all classes and held out the promise of a stake in the new society, but there were too few opportunities to satisfy all the children of the revolution with its fruits. Thus the discontented form a turbulent displaced element, emancipated, literate, but with no stability created by an interest in the *status quo*. Third, inadequate government resources to control the political process—lack of funds and skilled personnel, inadequate constitutional powers, too little patronage to buy off discontent, diminished authority for the administrative services *vis-a-vis* mass organisations at the local level. (It is doubtful, however, whether any problems would be solved just by giving governments more of these powers.) A fourth category of weaknesses, the administrative and technical shortcomings of the governmental machine, has critically aggravated a situation which would in any case have been appallingly difficult to handle. It is these which spring to mind when we ask why governments, parliaments or parties were not able to take firm action to remedy some of the country's less intractable problems. Yet it is at this point that we find ourselves faced again with the apparently intrinsic weakness of governments in Indonesia, which requires analysis in another dimension, as it were.

This weakness is not just a matter of the faulty machinery of government—the overstaffing of lower administrative echelons side by side with gradual wastage of senior officials, the paralysis of initiative created by bureaucracy and the simultaneous insecurity of tenure created by political appointments, red-tape, bungling, inertia

⁵ H. Feith, "Indonesia" in G. McT. Kahin (ed.), *Government and Politics of Southeast Asia* (Cornell University Press, 1959.) 207-10 and 219-20.

and frequent lack of technical knowledge. These faults are not peculiar to Indonesia, although nowhere else in Southeast Asia had the colonial government done so little to prepare for independence in the way of higher education or top-level administrative responsibility. The Dutch had left only one organisation; the *pamong pradja* (the regional civil service under the Minister of the Interior) in which Indonesians had been accustomed to considerable responsibility, and even there only up to the middle grades. It is still one of the most impressive pillars of the Indonesian administration, working efficiently along well-worn tracks, while experimenting to combine the old authoritarian system of local administration with the requirements of democratic local government. In fact, it is typical of Indonesia's experience in many fields that established institutions which can keep on running along familiar lines have often been reasonably successful. But complex problems requiring innovation and adjustment of government policies to radically new conditions have been less effectively handled. If Indonesia had not been faced with the urgent necessity of reorientating her economy and coping with the social problems thrown up by urbanisation and a cultural revolution, her machinery of government might have proved adequate. But there was no easy resolution to the tensions building up and only a strong government would have been able to introduce policies which might, in the long run, have eased them.

The chain of connection is all too clear. The administrative machinery inherited from the Dutch could only have coped with the stresses of a deep-seated revolution if the revolution had thrown up a strong government. The diffusion of power militates against strong government, as Dr. Feith has shown. Any political system would, of course, have been subject to the same weaknesses; it remains to be seen whether an authoritarian regime, such as we see there at present, will succeed in overcoming them. But Parliamentary democracy was additionally burdened with the handicap of relying on the consent of the governed in a very immediate sense. Governments were expected to deliver the goods—quickly and painlessly—before dissatisfaction set in. But party coalitions strong enough to do this were only possible if diverse interests could have been reconciled. Where basic conflicts of interest could not be settled by mutual agreement, the governments of the 'fifties were not strong enough to simply *impose* solutions. On the other hand, in the deteriorating

atmosphere of suspicion between parties, regions and individuals, negotiated settlements would have had to be expressed in formulas that were virtually mechanical and proof against the wiles of other politicians. Solutions of this kind would have been almost impossible to achieve on several crucial issues, most notably the problem of decentralising powers and funds for economic development to local authorities, which underlay the *crise de regime* of 1957–8.

The Problem of Decentralisation

The arguments in favour of far greater decentralisation in Indonesia are commonly accepted, even in Indonesia. Kahin has epitomised a widely held view of this matter in his conclusion that, despite the opprobrium attaching to the name 'federalism' because of its association with Dutch divide-and-rule tactics in 1957–9, "Indonesia is a country peculiarly suited to a highly decentralised political system What may emerge is a system of government not called 'federal' by Indonesians, but having the essential properties of federalism".⁶ This is certainly the desideratum. It would not even matter greatly if the principle merely found disguised expression behind a mass of seemingly incompatible regulations and institutions. But I am doubtful if the central government ever will or can distribute powers to the provincial authorities in a way that conforms to a strict interpretation of the federal principle. Federalism has been defined in several ways. Wheare's criterion that central and regional governments must be co-ordinate and independent may be impracticable in the modern world. But let us merely accept the much broader criterion that each is 'sovereign within its sphere', or draw a very loose analogy with the distribution of powers in Canada or India, where the functions of each government are specified and the centre has reserve powers which it may exercise or brandish, but generally prefers not to. Neither the political tradition nor the mechanics of power in Indonesia point towards a clearly defined relationship of this kind.

The traditional system of local government under the Ministry of the Interior and the distribution of functions between the various levels of government belong to Dr. Legge's province rather than mine. I will refer to it only to show how the structure inherited

⁶ Kahin, *op. cit.*, 575.

from the Dutch will tend to prevent effective decentralisation. Functions are not distributed exclusively between central and regional governments in unambiguous fashion, but are devolved either by a process of *medebewind* ('sharing-in-government'—i.e. sharing the administrative responsibility for the policies of a higher authority) or by allowing the lower unit to regulate in fields not pre-empted by the higher authority, which retains a power of supervision over the lower unit.⁷ The system sounds unwieldy and it certainly stems from a centralised, authoritarian tradition which may not be capable of effective devolution without being substantially refashioned. But at least it is working—and extensive devolution would entail the drastic dismantling of a complex network of laws and ordinances. Meanwhile, under present conditions political forces appear to be pulling in the direction of retention rather than modification of the structure. (It is, incidentally, hard to imagine the Supreme Court taking over the task of interpreting a quasi-federal division of powers in the Indonesian political and legal environment, in place of central government supervision. The Court has previously tended to avoid constitutional issues and the judiciary has generally been distinctly subordinate to political authority in the past.) A precise delimitation of central and local government powers of a quasi-federal nature that does not leave the centre a strong discretionary right to interfere simply appears impracticable with such machinery.

In regard to local government finance, the difficulty of eliminating an element of purely arbitrary decision by Djakarta is even greater. The taxing powers of local authorities are woefully inadequate and, as long as the bulk of the nation's revenue comes from indirect taxes on foreign trade, provincial and lower-level autonomous governments will have to rely on the subsidies and grants they receive from Djakarta, which alone can operate the main revenue-earning taxes. Unless the allocation of revenue available for distribution between the various regions⁸ can be reduced to a purely

⁷ The system of local government is most fully outlined by J. D. Legge in his *Problems of Regional Autonomy in Contemporary Indonesia* (Cornell University, Modern Indonesia Project, 1957. Mimeographed.) 34–38. See also his contribution to the present symposium.

⁸ I use the term 'region' as a translation of the Indonesian word commonly used in this context *daerah*. The precise denotation of *daerah* is 'district'; hence it is strictly applicable to any subordinate unit of government. The two levels of

mechanical formula, as also the total amount of foreign exchange to be made available for distribution, the ultimate decisions must remain in the hands of the central government. Attempts have been made to compile a formula for distribution of available revenue to the regions in proportion to a number of weighted factors—population, area, length of roads, state of educational advancement etc.⁹ Parliament did not get round to approving this and it would have been a miracle if the various regions could have reached agreement on the weight to be given to all the elements in the formula. The whole question has in any case been of merely academic importance in view of the severe financial situation since 1956, as also has a government bill of 1957 allotting certain tax revenues into the pool for distribution. But even here the central government retained the right to determine according to circumstances how great a portion of the major taxes it would transfer to the regions. It is hard to see how the central government can avoid retaining an ultimate discretionary authority in this field while the present pattern of taxation persists.

The unlimited discretion of the central government is bound to be augmented by a further peculiarity of the Indonesian economic structure which profoundly affects the problem of decentralisation. This is its control over the exchange rate—not usually thought of as a function that is relevant to the federal problem, but one which here touches on one of its most controversial aspects, redistribution of income from the wealthier regions to poorer ones. Some redistributive effect of federal taxing and expenditure policies is generally accepted as justifiable, although it is not usually of very substantial proportion. But in Indonesia the case is different because of the prevalence of multiple exchange rates. A country with a single

autonomous local government, to which it is most frequently applied, are *provinces* (of which there were 17 in 1957) or *kabupatens* ('regencies' in Dutch times, of which there were about 80 in Java alone). But the word has acquired a broader connotation since the dichotomy between *daerah* and *pusat* ('centre'—hence Central Government) has to some extent been identified with the political grievances of the regions outside Java. They are most deeply felt in areas remote from Djakarta. Yet even the regions closest to Djakarta may be very much aware of the dichotomy and sympathetic to the non-Javanese regions on some (but not all) issues.

⁹ An admirable summary of this complex but important problem is given by Douglas S. Paauw: "The Role of Local Finance in Indonesian Economic Development", *Ekonomi dan Keuangan*, February 1955.

'equilibrium' exchange rate, or something near it, does not find itself artificially taxing its exporters and subsidising its importers as a country like Indonesia has been doing.

Indonesia's exchange rate has to deal with a unique problem because of a structural unbalance in her economy, which has its roots in colonial history and the changing patterns of development. Java, with nearly 70 per cent of the nation's population, produced less than 15 per cent of its foreign exchange earnings during the mid-fifties. Sumatra produces roughly 70 per cent of the foreign exchange, with only 16 per cent of the population, and enjoys strikingly higher per capita incomes.¹⁰ Sumatra holds out bright prospects for development in the future. Java has already experienced substantial development, but the crops which made it possible—coffee until 1870, sugar from 1870 to 1930—have collapsed beyond hope of recovery to their old levels. Until 1910, the wealth of the Dutch East Indies very largely arose from the development of Java: even twenty years later, when the rubber and oil of the Outer Islands were more valuable than the sugar, Java's exports exceeded her imports. But since the Javanese sugar industry collapsed in the Depression, nothing has been found to replace it. Industrialisation constitutes the only feasible prospect, but the capital must come from elsewhere—either the other islands or abroad. Meanwhile, the 'population explosion', which started in Java 150 years ago, continues to push beyond the 60 million mark. The island can meet the bulk of its food requirements. But its imports must, in effect, be subsidised.

Without going into the complexities of Indonesia's system of multiple exchange rates, it is sufficient to explain that the par value of the *Rupiah* has been overvalued ever since the war, but that a bewildering set of taxes and 'inducements' on imports and exports has created a variety of effective rates of exchange for different types of transactions. In this way, with the addition of a rigorous foreign exchange control, an overall balance of payments on current

¹⁰ My estimate of Sumatra's contribution to Indonesia's foreign exchange earnings is based on the only figure currently accessible to me—her share of total exports from January-October, 1957. (See *Ekspor menurut jenis barang*, October 1957, Table 2. Biro Pusat Statistik, Djakarta.) It is not likely to be far from the average figure for the mid-fifties. The population breakdown for 1956 is taken from the *Statistical Pocketbook of Indonesia*, 1957 (Biro Pusat Statistik, Djakarta.) 12.

account has been maintained. There has been considerable capital flight through the black-market; however; the 'free' (black) market rate for foreign currency against *Rupiahs* has rarely been less than 250–300 per cent of the official par rate. This is not a true indication of what a 'real' or equilibrium rate would be if it could be struck, but the mechanics of the exchange rate are not generally understood. It is of little profit to go into the question of what a 'real' rate for the *Rupiah* might be, for there can be no single rate which will automatically bring supply and demand for foreign exchange into equilibrium through its effects on the cost structure, without further use of controls. (If one were to posit a hypothetical situation in which the different regions were able to strike individual equilibrium rates of exchange for their extraregional transactions, in relation to their resources and cost structures—as if each were an independent state—the Javanese *Rupiah* would inevitably be weaker than a Sumatran one. But not nearly as weak as a crude export-import balance suggests, since inter-island trade and the account for services modify the pattern greatly.) Even the I.M.F. has admitted that a system of multiple exchange rates is justifiable in Indonesia's circumstances.¹¹ The fact remains, however, that the system has generally worked as a subsidy on all but luxury imports and a disguised tax on exports. The burden on exporters has been spotlighted by the constant and wide disparity between their purchasing power when they smuggle their produce at a black-market rate and that received in *Rupiahs* at the official rates for exports and imports. But so long as there are foreign exchange controls, there will be a black-market of some sort, hence inducements to smuggle. And no matter what rate of exchange is set, there will always be some redistributive effect in circumstances like these.

Indonesia's problem of regional redistribution of income differs from that of a country like Australia in one striking respect, which underlines another political obstacle to a strictly federal solution. In Australia, the redistribution flows from the wealthy, populous States which are politically powerful to the economically and politically weaker. It is, in effect, an act of grace, grounded in a sense of moral obligation to equalise living standards. The same obligation would

¹¹ The problem of exchange rates is discussed in Benjamin Higgins, *Indonesia's Economic Stabilisation and Development* (I.P.R. 1957) 27–35.

be admitted in Indonesia by the richer areas, but there the wealthier regions are politically weaker. They are apt to feel that they are being exploited by a government dominated by the representatives of the populous consuming provinces—notably Java. The chances of reconciling this conflict of interests by consent, especially if it is inflamed by ethnic and ideological suspicions, as it has been in recent years, are definitely slim. This is, to my mind, the most intractable obstacle to achieving a system of government resting *directly* on the consent of the governed in Indonesia.

The Crisis of 1957-8

At this stage, an account of the political background to the decentralisation problem may illuminate the issues I have been discussing more clearly than an abstract analysis of them. What Kahin calls the "superimposition of ideological differences upon regional and cultural differences" (one might also add 'political') brought about a state of tension in Indonesia, which, by 1957, could only have been remedied by effective measures of decentralisation and a simultaneous political settlement restoring regional confidence in the Djakarta government. Yet the former could not have been instituted (for the administrative reasons described above) until the latter had been achieved, and *vice versa*. This vicious circle of cause and effect was not broken by various attempts to negotiate a settlement throughout 1957. Finally, armed conflict broke out in February 1958, as a result of which the side which stood for constitutional government on an orthodox Western pattern was crushingly defeated.

The ideological cleavage dates back to 1953, when the first cabinet of Ali Sastroamidjojo was formed. It was the first cabinet to exclude the large Masjumi party (Muslim, with 'modernist' leanings), which from this time on can be regarded as the nucleus of the 'opposition' to the President and the parties willing to support him, P.N.I. (Nationalist) and P.K.I. (Communist). Up-till this time, party alignments had not really crystallised. There were conservative and progressive wings in most parties, and to some extent the relative strength of either wing affected a party's position in the political spectrum from right to left. But there were few clearly defined differences in party programmes: all major parties accepted

'Socialist' doctrines to some extent, yet none (not even the Communist Party) was very specific about what these meant. The Masjumi and, later, the religiously conservative breakaway party, Nahdatul Ulama, drew their support from their appeal to the more fervent Moslems, but both were very hazy about their attitude towards making Indonesia an 'Islamic State'. The P.S.I. (Socialist Party) was until 1952 the most influential left-wing group; it had been the most 'progressive' of the 3 main parties, in the sense of being both overtly Marxist, although anti-Communist, and the most 'Westernised'—in the non-political sense—although its parliamentary representation was not great. The P.N.I. had a very amorphous programme and rather conservative leadership, so that it seemed to have no clearly defined basis of support among the people, except nationalist symbols he created. Yet after 1952, the willingness of the P.N.I. to co-operate tactically with the communists (for the sake of preventing the Masjumi winning a victory comparable to the Indian Congress Party's, when the long-delayed general elections were held) had the effect of determining party alignments thenceforward.¹²

During the period of the Sastroamidjojo cabinet (1953-5), two new developments began to unfold which presaged the later crisis. Both were intensified by the results of the general election in September 1955. Party attitudes to communism became a bitter subject of dissension, by 1957 perhaps the most bitter, since the President's overt entry into the political arena made it into a key issue in the struggle for power. Moreover, there was a great increase in regional discontent with policies for which Djakarta was responsible. Inflation, economic stagnation, proliferation of bureaucratic controls and reports of corruption were now becoming endemic. A reduction of imports in 1954-5 forced up prices and magnified the advantages of illegal 'barter trading', or smuggling, on the black-market rate of exchange which now rose from about 200 to 400 per cent of the official rate.¹³ Inevitably, the islands outside Java, which

¹² The political parties and their programmes are described most fully by H. Feith in *The Wilopo Cabinet* (Cornell Modern Indonesian Project 1958. Mimeographed). On the crucial switch in P.N.I. policy in 1952, see *ibid.*, 121-3.

¹³ The 'free market' rate of the *Rupiah* is given in Table F, 12 of *Statistik Konjunktur* (Biro Pusat Statistik. Monthly.)

earned over 80 per cent of the country's foreign exchange, began to feel that they were being exploited by the system, as well as neglected by the government.

The election results destroyed any immediate hope of improvement for the regions. Outside Java, the Masjumi proved to be by far the largest party—in fact, the only party that could claim to have substantial backing in all parts of the country. But it did surprisingly badly in Java and thus emerged as merely the second of the four big parties. More seriously, the other three major parties were revealed as essentially Java-based, with little backing outside.¹⁴ Not that this was a bond between them. The second Sastroamidjojo cabinet of 1956 excluded the P.K.I. and contained the Masjumi. But it was clear that, with four big parties roughly evenly balanced, the Masjumi was in a permanently inferior bargaining position. The P.N.I. was prepared to co-operate with the N.U. in forming the nucleus of a cabinet. The P.K.I. was prepared to support any coalition that would keep out its arch-enemies, the Masjumi and P.S.I. The best the Masjumi could do was to accept a subordinate role in a coalition government so as to prevent the P.K.I. having a whip hand.

The elections had been awaited with quite unrealistically high hopes that they would prove a panacea solution to Indonesia's political ills.¹⁵ Soon after the new government assumed office, these hopes began to turn sour. More seriously, the non-Javanese regions began to revert more openly to barter trading, with the connivance of local Army commanders. It was as if they now realised their inability to exercise an influence in Djakarta through their parliamentary representatives and decided to use direct action to put pressure on the central government. There was more to it than that, of course, particularly in the chain of incidents during 1956 which foreshadowed a challenge to civil authority by discontented Army officers. These created an atmosphere of increasing tension in which regional discontent suddenly boiled over to precipitate the crisis of 1957–8.

¹⁴ Results of the general elections are tabulated in H. Feith, *The Indonesian Elections of 1955*, (Cornell Modern Indonesia Project, 1957. Mimeographed.) ch. 5.

¹⁵ The panacea quality of the election was illustrated, *inter alia*, by the extraordinary atmosphere of expectancy and tension on polling day: *ibid.* 48–9.

Between December 1956 and March 1957, dissident movements erupted in four provinces, all demanding, *inter alia*, a change of government and a better deal for the regions outside Java. These movements marked the first serious challenge to normal constitutional processes, but the crumbling of parliamentary democracy was taken a stage further when President Soekarno decided to step down from his position as a constitutional figurehead and intervene personally in the political struggle with his own 'conception' of a solution to Indonesia's troubles. His 'conception' explicitly attacked the underlying assumptions of a 'liberal' parliamentary regime, although he did not initially propose any actual modification of the constitution. (This was hardly necessary, since a Constituent Assembly had just started to discuss a permanent constitution to replace that of 1950, which was only provisional.) But the development of the political crisis strained the spirit of the existing Constitution, if not its letter, in two respects. Martial Law was proclaimed in March 1957, when the Sastroamidjojo cabinet finally collapsed, so that the government was armed with emergency powers against its critics; these have, in fact, been maintained ever since. Secondly, the President took the unprecedented step of declaring himself cabinet formateur and then setting up an 'extra-parliamentary cabinet of experts', responsible to himself and not subject to overthrow by Parliament. (Both these steps were attacked as unconstitutional by his critics.) However, the cabinet, led by Dr. Djuanda, continued to treat Parliament with considerable deference and it began to address itself immediately to the grievances which had given rise to the regional dissident movements. Its two most important measures were the virtual devaluation of the *Rupiah* in June 1957 (which was intended to benefit the exporting areas) and an attempt to give substance immediately to a basic law on Local Government, passed by the Parliament just before the political crisis developed.¹⁶ Since this law had been a triumph for the party politicians representing local interests over the policies advocated in the Ministry of the Interior, one must give the Djuanda cabinet credit for at least intending to concede greater powers to the

¹⁶ On the significance of the Basic Law on Local Government, see Legge, *op. cit.*, pp. 50–8. The Djuanda cabinet's attitude to the application of this law is described by Dr. Legge in "Experiment in Local Government 1950–59", *The Australian Outlook*, Dec. 1959.

regions. But the mechanics of putting this law into practice were inevitably slow and in the meantime a political settlement was becoming more and more difficult to achieve.

In mid-1957, the political struggle had become concentrated on a straight-out tug-of-war between the two openly dissident provinces, Central Sumatra and North Sulawesi, and the Central Government—which, in effect, meant the President, his Cabinet and the Army leadership. The former were refusing to remit their foreign exchange earnings and trying to encourage other provinces to put pressure on Djakarta likewise. The Central Government appeared both reluctant and unable to enforce its orders against them—hence the widespread impression, which later turned out to be so misleading, that the regions would be in the stronger position if it came to a showdown. That they were of this opinion became clear at the one serious attempt to negotiate a compromise settlement, the so-called 'Musjawarah Nasional' of September 1957. On crucial issues of Army discipline and barter trading, the regions remained adamant. They would not accept any political compromise (except in terms of a last-minute, patched-up reconciliation between Soekarno and Hatta, which was an empty symbol, although a serious tactical error for the latter) and the Cabinet again revealed its inability to produce a formula that would break the deadlock.

The conflict was brought to a head by the unforeseen consequences of the anti-Dutch campaign of November-December 1957. "Power rolled into the streets", Trotsky once said of February 1917. Something similar seemed to happen in the first ten days of December 1957, as the 'take-over' of Dutch enterprises developed. Direct action by mass organisations created the opportunity for a dramatic increase in communist influence. For a short time the government seemed powerless to control the situation. At this juncture, three leaders of the Masjumi fled from Djakarta to Sumatra, where they joined the dissident provincial leaders. In February they presented the government with an ultimatum: unless it reversed the trend to the left and repudiated President Soekarno's deviations from the constitution, they would proclaim a rival Revolutionary Government (P.R.R.I.). The government refused and a week later bombed Padang.

The rebellion was a complete fiasco. It did not gather political support snowball-fashion from waverers and friendly neutrals, as it

needed. Militarily, the rebels proved entirely unprepared for the expeditions launched against them. They were not able to force the government to its knees by choking it of foreign exchange. Evidently they never expected that the Central Government would call their bluff. Their apparently strong bargaining position of 1957 could only last so long as the issue was not forced to a trial of strength.

The consequence was a complete deflation of any remaining opposition to Soekarno's 'Guided Democracy'. The parties associated with the rebels were not formally banned until September 1960, but they were left at a hopeless disadvantage. Political parties in general were emasculated by the realisation that nothing could now prevent the creation of parliamentary representatives of Soekarno's 'functional groups'. At most they could argue about the details of such a change, to preserve the maximum of advantage for themselves. But the patience of the Army had to be considered too. Its dramatic success against the rebels had given rise to notions that it would be just as easy to clear up Djakarta's verbose politics. General Nasution was too wary to emulate the other Asian coups of 1958, however, though there were fears that he might. His 'middle way' merely consisted of giving Army officers a voice in political decision-making and a supervisory role over the new government estates and enterprises. They already had extensive martial law powers in the provinces as Regional War Administrators. They now assumed something of a role as the premier representatives of the 'functional groups' by virtue of their unrivalled services to the Revolution. The constitutional framework within which this new balance of power could most conveniently be expressed was achieved (despite surprising last-minute opposition from the two Muslim parties—united at last) by the return to the revolutionary 1945 Constitution.

Centrifugal and Centripetal Forces

The reasons for thinking that Indonesia would fly apart have attracted far more attention than the forces which have held her together. In 1957, it seemed undeniable that, if the government would not concede substantial decentralisation, the country must eventually disintegrate into military satrapies. There were two main

reasons for believing that the centrifugal forces must prevail in the end. The strongest was the crude economic fact that most of Indonesia's export income, and much of her government revenue also, was produced in the thinly-populated outer islands, whereas over-crowded Java imported far more than she exported.¹⁷ Open conflict seemed certain to upset this unbalanced state of affairs. The subsidiary reason was that the political conflict already brewing was partly rooted in the great diversity of the economic interests and social conditions of the different regions. Over-centralisation had been inflexible and inefficient. It was easy to imagine that a quasi-federal system could only be an improvement. It was also easy to oversimplify the equation of centrifugal political and economic forces, while neglecting the centripetal factors.

The most basic of these are very simple. Regional authorities, amongst whom the local military commanders have long been prominent, may feel a strong sense of identity with the people of their province and aspire to promote their interests rather than those of the Djakarta government. But their legal authority derives from Djakarta (except where they have specifically repudiated it, as the Sulawesi rebels did in proclaiming that their authority derived from their region) and the *ultima ratio* sustaining it is the Army. The Army has turned out to be one of the most strongly unified institutions in the country. It is not possible here to look into the numerous and inter-twined bonds of interest, organisation and sentiment which have made it so. It is enough simply to recall that when the show-down occurred in February-March 1958, the Army leadership was able to command the obedience of 'neutral' and wavering units; the rebels failed to split the Army seriously, although the circumstances were more favourable than they are ever likely to be again.

Next to arms, the key to power is finance. Here the central government has been in a much stronger position than is generally realised. It controls both the allocation of foreign exchange, which the export-producing regions would like to retain to themselves, and the disbursement of the lion's share of the *Rupiah* revenues needed by the autonomous regional governments, at both provincial and

¹⁷ The belief in 1957 that the centrifugal tendencies of the Indonesian economy would shatter the political control of the Central Government was implied very strongly in an article by D. W. Fryer: "Economic Aspects of Indonesian Disunity" in *Pacific Affairs*, September 1957, 195-208.

kabupaten level. The latter are not in any position to seize back unto themselves the disposal of their export income and so cripple the central government financially while making themselves independent, for a number of reasons. The regions do not share a common interest *vis-a-vis* the Central Government on this issue and are unlikely to apply united pressure against it. The poorer provinces know perfectly well that if each had to live of its own, only the 3 or 4 richest provinces would really benefit. The rest gain from the redistributive effect of Central Government policies, although they may still be critical of the way they now operate. The richest of all is East Sumatra, which includes the wealthy Medan estate area, yet for peculiar reasons of local politics, the authorities of this province have all along been among the most loyal to the Central Government. Moreover, even at the height of regional 'barter trading' in 1957-8, there was a serious limitation on the extent to which a dissident region like South Sumatra could in fact channel its foreign exchange earnings into its own coffers, instead of paying them into the Bank Indonesia where they came under the central foreign exchange control. This limitation was that the oil companies and foreign estates did not dare to defy the Central Government openly by refusing to pay their foreign exchange earnings into the Bank Indonesia: they might co-operate to some extent with a dissident regional commander to take mutual advantage of opportunities to smuggle, but they could not afford to do so openly. Ultimate control over the purse-strings did not rest in the hands of the regional authorities, as many people had inferred from statistical charts which showed 80 per cent of export income originating outside Java. Much of that income came from producers who could not afford to repudiate the authority of Djakarta. Anomalously, among the strong centripetal forces holding Indonesia together as an economic unit (second only to the criss-crossing network of credit ties leading back to the Bank Indonesia) should have been counted the foreign estates and mining enterprises, which produced much of the country's export earnings. It might have been a very different story if the bulk of foreign exchange were earned by small-holders or indigenous enterprises, whose propensity to barter trading and scope for resisting taxation by Djakarta would be much greater.

These are the obvious factors that have made it possible for the Central Government to maintain its authority against manifestations

of rebelliousness, which were too feeble to shake it seriously. A more recondite factor, that will tend to maintain a strong political advantage for the Central Government under any circumstances, arises from the peculiar situation concerning the exchange rate, already mentioned. Since there can be no automatic solution or obvious compromise in this field, the Central Government must be left with authority to make decisions which are unavoidably political. There is no alternative short of disintegration—and the cohesion of the Army is protection against that.

The Pull of Control Mechanisms

Nonetheless, having suggested that these are the most binding centripetal ties (the list is not exclusive; I have omitted the powerful sentiment of nationalism, since I am concerned only with institutional factors), I must now carry my argument a stage further. It may well be that these ties, which I have described in terms of the 1957–8 situation, are weakening as circumstances change. It is possible that recent economic and administrative changes have undermined some of the forces favouring the Central Government. As long-term, secular changes in the economic and administrative structures occur, some shift in political power seems bound to follow, and it may strengthen the hands of regional authorities in negotiating with Djakarta.

Stating the matter in somewhat extreme terms, I want to stress the paradoxical consequences of the shift to increasing reliance on direct government interference in economic life. This contrasts sharply with the widespread use of indirect controls in the 'liberal' period before 1958, as may be seen from the examples quoted below. I do not claim to be suggesting anything more than the direction and nature of change: to indicate how far it has gone would require far more evidence about current trends. But there is a kind of historical necessity about the process, which makes it plausible. And the forces at work seem relevant to any discussion of centrifugal and centripetal tendencies, even though there may still be a good deal more to be said about them.

The first of my examples of contrast is in the field of taxation. Throughout the 'fifties (and, indeed, even up till the present), *direct*

taxes have contributed relatively little to the budget.¹⁸ The bulk of government revenue came from import or export taxes, very little from land, company or personal income taxes. (Foreign estates, mines or trading enterprises provided the bulk of these in any case, since it was relatively easy to levy taxes on them and their products.) In particular, the fraction levied directly from Indonesian incomes was far lower than before the war and it was rather inadequately collected. Most of the revenue came from sources which were easily controlled by the central government; more rigorous collection or increased yields from land and personal income taxes would have been less easy to supervise. The taxable capacity that existed in these fields could only have been tapped if the government had either decentralised this source of revenue to the regions to assess and collect, or had a very efficient and dedicated taxation service, which it did not. But if revenue from trade taxes shows a secular tendency to decline, as seems likely, the yield from direct taxes will bulk larger in the scale; local authorities may then be driven to all sorts of expedients to raise revenue directly themselves, whereas previously they were able to rely on disbursements from the centre and Djakarta took a suspicious attitude towards local initiative. The consequence is bound to be a further diffusion of power, since the regions will become proportionately less dependent on the centre. It is a strange paradox that the tax structure Indonesia has inherited from the theoretically *laissez-faire* colonial economy should appear in this light as an essentially centralising force, while greater reliance on direct taxation, which will become essential if export trade declines, will have the effect of forcing the central authorities to devolve the taxing function to officials who will at least be subject to local pressures, even if they remain servants of the centre.

In the second place, the government is becoming directly involved in processes of production to a much greater extent than it was in

¹⁸ *Bank Indonesia Annual Report*, 1958–9, table 13, gives the following breakdown of central government revenues.

	(Figures in thousand million <i>Rupiahs</i> . Provisional estimates.)		
	1956	1957	1958
Total receipts	15.7	16.9	19.7
Direct taxes	3.1	3.5	4.3
Receipts from indirect taxes and foreign exchange levies	10.5	11.8	13.4

the *laissez-faire* climate of the 'fifties. Until the takeover of Dutch enterprises in December 1957, only a minute sector of the economy was publicly owned. The Five Year Plan adopted by the government in 1956 had undertaken a substantial programme of developmental expenditure designed to raise productivity, but little of the new public investment would have either pioneered new fields of export production or expanded existing productive capacity. Implicitly, it was assumed that private enterprise would maintain its 1952-56 rate of investment, but no attempt was made to channel or guide it in order to shape the economy to pre-determined needs, as there has been (to a small extent) in the Indian plans. New investment was left, in effect, to be directed by market forces. Since the takeover of Dutch estates and commercial enterprises, which accounted for a large fraction of the private investment needed to sustain the economy even at 1952-56 levels of output, the State has become responsible for this large and vital segment of production and distribution, in fields where any breakdown or attribution will be felt very quickly throughout the entire economy. The political and social consequences of this cannot yet be anticipated with any precision, although the growth of a new elite with many similar interests (officers, senior bureaucrats, managers and technicians) could prove immensely important. But the financial consequences are obvious.

The estate enterprises are now under the direct control of one government agency (National Estates Central—or P.P.N.) and the commercial and industrial enterprises under several others. If the new organisation works efficiently, maintains the old level of foreign exchange earnings without requiring *Rupiah* subsidies and lays the basis for an expansion of export capacity, the Central Government will be able to manage, even if it received no nett contribution to the annual budget. If, however, the manifold pressures on a bureaucratic organisation reduce efficiency and create a drain on the budget, it will gradually weaken the government. There was a certain advantage to the government in leaving the responsibility for producing much of the nation's export income in the hands of foreigners, in that the costs of inefficiency did not fall upon the State budget; foreign enterprise was politically dependent on whatever conditions the state allowed it, provided only that the cost structure was reasonable enough to hold out a prospect of

making some profit. Today, the state enterprises are only likely to prove profitable if rigorous economic discipline is maintained and stability achieved, so that inexperienced estate managers are not burdened with additional problems. Otherwise, the central supervisory mechanism is likely to crumble. Yet there is a danger that local pressures on estate managers will prove irresistible—including the temptation to connive at smuggling with the local military authorities.

A third major difference between the present and pre-1957 scene in Indonesia was the degree of direct local interference in economic life by local military commanders exercising powers under martial law. Where previously the distribution of goods had been left almost entirely to pressures of supply and demand, direct control over the price and distribution of essentials has now become widespread. A consequence has been that the authorities have had to intervene in the organisation and supply of essential goods, have taken action to prevent hoarding, to prohibit strikes and to fix wages. As military commanders have become responsible for the economic health of their territory, they appear to have taken over some of the functions of central control mechanisms. In at least one case, a local commander simply overrules central policies in order to maintain the flow of business in his territory. It seems inevitable that more and more power will accumulate in the hands of regional military commanders, since the Army has been vested with wide supervisory authority over the organisations administering former Dutch enterprises in addition to their authority as War Administrators under martial law. In their role as guardians of the Revolution against the follies and betrayals of politicians, Army leaders take an almost proprietary view of their regions. But, for the most part, other members of Indonesia's newly-emerging managerial elite seem prepared to acquiesce and cooperate with them.

The three examples I have given suggest that as the economic structure changes, power is more likely to be further diffused, rather than concentrated. The government is making efforts of various kinds to tighten up the political structure—by insisting on adherence to a national ideology, by indoctrination and by 're-tooling' members of the public service who are suspected of disloyalty. But it remains to be seen whether political measures of this kind will suffice to counteract the centrifugal trends whose roots are stubbornly

institutional or economic. Every time the central authorities find it necessary to replace one of the indirect control mechanisms utilised during the 'fifties with some form of direct control, requiring a personal decision instead of mechanical application of a general rule, a new vested interest is created, a potential source of influence and corruption—which spells waste.

An example of this may be seen in the control of import licences: rights to obtain foreign exchange for imports were rationed out during most of the 'fifties by price differentials, modified by the complex structure of widely-ranging taxes on imports. Essentially, the system worked indirectly, with marginal resort to quantitative controls. Since 1959, the right to import most essential commodities, almost 80 per cent of total imports, has been restricted to nine big government import houses. Whatever the formal mechanics of the system since then, there is little doubt that, in circumstances of financial stringency, this most important of economic controls will now be exercised directly. But it is not necessarily easier or more efficient to administer import controls in this way. Decisions between conflicting policy objectives may prove harder to make than before, since the vested interests concerned are now part of the machinery of government, with greater political influence.

If the government servants work efficiently and honestly, the built-in centripetal tendencies of bureaucracy might counteract the forces I have mentioned. If they do not, a host of pressures will compound them. Further diffusion of power would result and Indonesia would be so much further away from the strong central authority she undoubtedly needs.

J. D. Legge

INDIGENOUS AND IMPORTED INFLUENCES IN INDONESIAN LOCAL GOVERNMENT

IT IS obvious that Indonesia's constitutional forms since independence are based on Western models and informed by Western concepts of the State, sovereignty, and responsibility, and that the outlook of those who have operated these institutions is also, to a great extent, Western in character. Certainly during the first few years of independence political processes were dominated by an intellectual elite whose education had been obtained in Dutch institutions in the Indies or in Holland, and whose view of the task of creating a new independent State was moulded by the usual categories of Western political thought. It is equally obvious that Western models in the Indonesian environment acquire a different flavour, are worked in a different way and allow the operation of traditional procedures of decision-making. The kind of government resulting from this fusion of traditions might even be said to imply concepts of the state quite different from those which form the stock in trade of Western political theory.

These two propositions, stated in general terms, are commonplace. Difficulties arise when an attempt is made to stress one side or the other. The contrast between Western and 'indigenous' traits is, of course, itself a crude one, and the complexities of the effects of Indian, Chinese, Islamic and Dutch contacts over a long period of time render it impossible to sort them out precisely. Are the results of Hindu influence on Javanese society to be classified as 'indigenous' or not? Those who seek distinctively Indonesian procedures for the guidance of the country in the modern world do tend to emphasise features of Javanese social order which may well be derived from external contact. The same sort of point might be made concerning Indonesia's absorption of Islam, and it is worth noting van Nieuwenhuijze's general theme that Islam contains many elements which "go very well together with a closed community way of life

and thought".¹ It is not easy to separate them from the environment which absorbed them. (Would it be far-fetched, for example, to argue that the idea of *mufakat*—consensus—is related by analogy to the Islamic doctrine of 'the infallibility of the consensus'² as well as to so-called indigenous processes?)

But though it may be impossible to distinguish precisely the sources of current characteristics, the desire to make at least a broad, and no doubt crude, distinction between what is new and what is traditional, and to emphasise the latter, is common in Indonesia today. As might be expected the resulting interpretations of political life are often contrived and artificial, for the game of detecting influences can usually be played both ways. Because of the complexities of the case it is usually possible to point to two sorts of comparison—that which likens political institutions and procedures to Western, particularly Dutch, models and that which points to an earlier source. When President Soekarno, in 1957, claimed that Western liberal democracy had failed and that his proposed plan for a four-legged government and a national council based on functional representation would constitute a distinctively Indonesian solution it was possible to argue, without being too serious about it, that his blueprint had no traditional elements at all but was really based on the Western model with which he was most intimately familiar—the government of the Indies under Dutch rule. He cast himself for the role of Governor-General. His proposed Cabinet was the equivalent of the conference of department heads. The National Council was a substitute for the Council of the Indies. And Parliament, relegated in his plan to a comparatively impotent role, was the Volksraad. At the same time it is true that the principles of *musjawarah* and *mufakat*, deliberation and consensus, which Soekarno was attempting to clothe in new constitutional forms, were evocative principles in Indonesian political thinking.

It is not the purpose of this paper to advance any general view as to the relative importance of traditional and imported influences. It is proposed instead to notice the presence of both elements in the constitution and working of local government, and to draw attention to certain features of the Indonesian discussion of them. What is

¹ C.A.O. van Nieuwenhuijze, *Aspects of Islam in Post Colonial Indonesia* (The Hague, 1951), 17.

² Snouck Hurgronje, "Islam", *Selected Works* (Leiden, 1957), 55.

important here is not so much the facts of the case—the actual degree of indigenous as against Western influence—as the growing and self-conscious determination to emphasise the traditional content of political forms, or to fashion new institutions which are held to be based on traditional procedures. This may be seen in the terms in which the debate on alternative constitutions of local government was conducted, just as clearly as it is illustrated in the discussions of guided democracy and the 'Indonesian identity' at the central level.

The Administrative Service and Local Government

The central problem in the whole debate on local government planning since 1950 has concerned the future role of the territorial administrative service, inherited from the Dutch, in a situation where it was intended to allow a considerable decentralisation of power to local councils. The territorial service—the *pamong pradja*—had survived into the period of independence and it remained the primary instrument of government—the means by which the centre, through its representatives in the sub-divisions of the country, provinces, residencies, regencies, districts and sub-districts, penetrated to the rural population. The Central Government was naturally reluctant to give up such an important means of centralised control. At the same time the very diversity of Indonesia has made it necessary to meet local feeling by conceding a reasonable measure of self-government to the regions. The result was a compromise which bore many close resemblances to the decentralisation experiments carried out by the Dutch during the 'twenties and 'thirties (and indeed to the local government system of Holland itself, since the decentralisation plans had naturally taken the Dutch system as the model for the Indies). As a result a foreign observer of Indonesian local government is likely, at first glance, to be struck by the direct carry-over from the colonial period of both the Central administrative system and the institutions of local autonomy.

Very briefly the independent republic, when it came to handle the problem of regional feeling, envisaged the reconstitution of provinces, regencies, and municipalities as areas of local government each with a representative and executive council. But the most controversial question concerned the character of, and the method of

appointment to, the office of chairman of the executive or 'regional head'. Without going into the details of the several plans hotly debated during the 'fifties, the principal issue was whether the position should be filled, as formerly in the decentralisation experiments of the Dutch, by a member of the Central Government's administrative service, or whether it was to be purely political in character, filled by a person elected, directly or indirectly, by the region itself. The former solution was favoured by officials of the Ministry of Home Affairs since it enabled the centre to maintain a close supervision by its own officers over the work of local governments. The political parties which were responsible in parliament for the drafting of a local government law, however, resisted the idea of paternal control implicit in this arrangement. As a corollary to the debate on this question was the further problem: if local governments were to be supreme in their own sphere, and if the office of regional head was to be an elective one, was it open to the Centre to maintain its administrative hierarchy for its own separate purposes of 'general government'? The local government law which was eventually passed at the end of 1956 represented a victory on both counts for the political parties' point of view. The position of regional head was to be a purely elective office and, though the law was silent on the future role of the administrative service, subsequent legislation provided for the transfer to local governments of its functions and for the gradual disbandment of the service itself. Subsequently, however, a Presidential Edict reversed this trend and returned to the principle of appointment of regional heads. It thus made possible the continued close connection between local government and Central administration.

During the mid 'fifties the debate on these alternative solutions was conducted in a language familiar to the Western observer. The official view based itself on the special difficulties of the Indonesian environment: the ignorance and low rate of literacy of the rural population, and the strength of custom at the village level, made necessary a hierarchical administrative machinery; Indonesian society was not yet ready for a full exercise of democratic rights through an advanced form of council machinery at the local level; councils in regencies and provinces could meet the needs of the elite, but they were not really representative of the agriculturist. In a transition period, therefore, so ran the argument, paternal supervision

by the Central Government, exercised through the former colonial service was a straightforward and necessary expedient. To the political parties, however, the official plan represented a direct return to the forms of colonial rule and as such was held to be inconsistent with modern democracy. Even so the official view was clearly a "Western" view and thus far the controversy over the relation of the administrative system to local governments was presented in terms of one Western model against another.

But as the 'fifties wore on, and as the President began to elaborate his concept of guided democracy based on distinctively Indonesian procedures, the local government argument began to clothe itself in different forms. To the paternalistic argument of the official—the argument that in Indonesia the operation of democratic councils needed careful supervision by officials of a Central Government—was added the further theme that the administrative service was itself part of the Indonesian tradition. The service may have been the main instrument of Dutch authority but the colonial forms were based on earlier forms, and drew their strength from that fact.

There was some substance in this view. It would certainly be a mistake to regard the administrative service as merely a survival from the colonial regime. The lower ranks of the service were of more ancient origin for they preserved the administrative forms of the earlier Javanese kingdoms. The Dutch administration in its various stages had merely imposed a higher apparatus at the top, in the shape of governors and residents, but continued to use existing forms below. Regents, *wedanas* and *tjamat*s were thus absorbed into the service of a centralised colonial government. And until the end of the colonial period these lower ranks of the service continued to be filled by persons of aristocratic origin (*prijaji*). These people had, in effect, formed Indonesia's mandarinat. "Literati, gentry, patricians, brahmins, aristocrats—whatever you wish to call them—the *prijaji* are the Javanese version of a social type, seemingly universal in non-industrial civilisations: the men who are able to write."³ There was a mystical basis underlying the authority of this aristocracy. The ordered society of which it formed the higher levels was seen as the earthly counterpart of a supernatural order. High rank on earth, nearness to the king, was like nearness to god on the

³ Clifford Geertz, "Religious Belief and Economic Behaviour in a Central Javanese Town: Some Preliminary Considerations."

supernatural plane, and carried with it the same sort of mystical aura. It was partly for this reason that officials embodying the power of the Central Government were able to evoke a very special sort of respect, and this continued to be so even after the administrative service had ceased to be an aristocratic preserve. A modern member of the service, even if a commoner, would still carry more than a common authority.

The continued existence of such an administrative class was as vital for the Republic as it had been for the colonial administration of the Dutch. Indeed the problems of the two were not entirely dissimilar. Each had to explain its purposes and carry its power to a largely illiterate agrarian population whose immediate local loyalty was greater than that to a remote Central Government. And the most satisfactory channel to the village was through a territorial service whose lower levels fell within the village's traditional scheme of things. In the crisis of the 'fifties the service represented one unifying factor, and it became important for the Central Government to stress its distinctively Indonesian origins rather than its character as an arm of Dutch rule.

The fitting of the *pamong pradja* into this longer perspective was part of the refurbishing of the country's institutions which followed the return to the Constitution of 1945. On the face of it the 1945 Constitution itself might be described in 'Western' terms as providing for a strong presidential executive. Soekarno's own justification, however, was different: that the Constitution would enable formal expression to be given to traditional procedures. In particular he was concerned to stress the principles of deliberation and consensus—*musjawarah* and *mufakat*—operating under presidential guidance. The two concepts are not easy to translate precisely but they embody the notion of long discussion until an agreement emerges reconciling the various shades of opinion which have been expressed. It was Soekarno's claim that this was the procedure of deliberation and decision in the village assembly and his plan was to adapt the procedure by securing the representation of the various 'interests' of the country in appropriate policy-making machinery at all levels. In this way all important points of view to be found within the Republic would be expressed, and careful deliberation could thus eventually lead to conclusions about policy which would command the support of all groups. This was the role for which his

National Council of 1957 had been cast, and it was to be extended under the 1945 Constitution in the functional composition of the People's Deliberative Assembly, the Supreme Advisory Council, and even Parliament itself. The concept applied at the central level was applied with the same sort of rationale at the local level. At the local level the aim was to set aside the idea of an elected regional head and to place existing deliberative and executive bodies once more under the guidance of the administrative service. Hence the desire to insist that the service did have its roots in the Indonesian tradition. It is significant that the Presidential Edict of 1959 which extended this plan of 'guided democracy' to regional government, and which thus saved the *pamong pradja* from its threatened dissolution was based on such doctrinal considerations rather than on the considerations of straightforward expediency which had been advanced during the earlier stages of the debate.

Traditional Processes of Decision-making in Local Councils

The change in the arguments by which the administrative service was defended had its counterpart in the discussion of the local council system. Here too an early acceptance of councils because they were democratic bodies on a Western pattern was replaced by the later search for a distinctively Indonesian way of doing things. Emphasis was first placed on the way in which traditional procedures were expressing themselves within the framework of existing councils, and then on the need for constitutional changes to allow such procedures to operate in a more thorough-going fashion.

The local councils, which were first established in Indonesia under the provisional local government legislation, had followed the pattern of the Dutch decentralisation experiments in providing for an executive which included the main groups in the representative council. The permanent local government law of 1957 adopted the same principle. Instead of making the executive council the preserve of the majority party, or of a majority coalition, in the representative council, it was to be elected by proportional representation from the representative council, just as the representative council was itself elected by proportional representation by the electorate.

There were serious objections to this arrangement, the most important of which was the difficulty of securing strong government. A

multi-party system was, in any case, likely to make it difficult for any one party to secure a majority of seats in the representative assembly. The fact that, even when one party did emerge with an absolute majority, it could not control the executive, further accentuated the tendency towards weak executives. It could be argued, of course, that at the local level government was essentially a business-like matter—the provision of services such as hospitals, water-supply or roads for the local population. For this purpose ordinary political party competition was less relevant and a multiparty executive might well be able to co-operate in a business-like way. However though such an argument might well apply to the lower levels of local government, the regency or the municipality, the government of provinces was a much more elaborate matter. Provinces resembled the constituent states of a federation rather than local governments proper, and at this level party divisions might be expected to follow more closely the national model.

In any case, whatever the defects of the system, its drafters were following one Western model rather than another. The reason for the adoption of the principle of proportional representation in the selection of executive councils was probably mere inertia. The republic was merely adopting a known system whose main outlines had been established thirty years before.

However as the desire to return to tradition began to assert itself there was a tendency to see, in the existing constitution of executive and legislative councils, the expression of a distinctively Indonesian idea. Multi-party representation on both councils was held to be well suited for the kind of deliberations which Soekarno desired at the central level.

It is certainly true that within the framework of democratically elected councils certain extra-constitutional conventions had been developed, and these might be held to express the principle of consensus. One may instance the desire of council representatives to avoid pushing any issue to a straightout vote. The tendency has been rather for prolonged discussion in an attempt to iron out differences before an actual decision is made. It is argued sometimes that the taking of a vote commits people to a position from which it is not easy for them thereafter to retreat. To leave the question open as long as possible enables an adjustment of differences without any loss of prestige. In any case it is difficult for the foreign observer to

obtain any clear picture of regular 'divisions' of a representative assembly. He is likely to be informed that this is not the way that democratically elected councils operate in Indonesia. And he will notice the large number of decisions which are reached by 'acclamation' rather than by a vote in which a majority will carry the day over a minority. Something of the same determination to reconcile potentially opposing groups may be seen in the way important council offices are allocated. An examination of the way in which these offices are filled appears to reveal a tacit understanding between major parties such that, without any open conflict or friction, the various positions, regional head, chairman of the representative council, vice-chairman of the executive council and so on, are fairly distributed as between parties.

One may wonder, however, how distinctively Indonesian all of this is. One may even wonder whether the principle of consensus does operate at the village level quite in the way envisaged by Soekarno. Leaving that aside it must be recognised that other societies too have their methods of accommodation between competing groups without disturbing the formal constitutional framework. Just as individual parties may caucus outside the council rooms so quiet behind-the-scenes negotiations may enable the major differences between parties to be ironed out in advance of a debate. The important difference in the Indonesian situation is that these factors are formally elevated to the distinction of 'a concept', and this concept of consensus as a traditional political procedure has been allowed to condition the actual workings of local councils just as it has at the level of the national parliament itself. What may originally have proved not more than a by-product of a multi-party system and the use of proportional representation became an important element in the search for a traditionally Indonesian political system.

With the return to the Constitution of 1945, and the consequent attempt to extend the principles of guided democracy even to the field of local government, the President was less satisfied with the way in which existing councils, composed merely of party representatives, were able to express the idea of consensus. He therefore sought a modification of the system to bring it into line with changes he was making in the national parliament. The introduction of the principle of functional representation at the local level was introduced in 1960, and, as with the return to the principle of

appointment of regional heads, the change was motivated by doctrine rather than by any consideration of convenience.

The Search for a Concept

The preceding discussion has been concerned only obliquely with the interaction of what Professor Morris-Jones has called the Western and the traditional idiom.⁴ In his analysis the traditional idiom is something which an observer could notice—an element in the political scene which is there as a matter of fact. In Indonesia the question has been rather a matter of doctrine. That is to say that though the traditional idiom may be observed in Indonesia as in India, it has happened that discussion of its presence has been based less on detached political analysis of what happens, than on a determination to describe what happens as expressing the traditional idiom. In general, the institutions and practices of the new republic were at first taken as belonging essentially to a Western idiom, and discussed in those terms. Later it became the fashion to insist that these same institutions and practices were not Western, or only formally Western, and that the spirit was Indonesian. Finally it was argued that, with the introduction of certain changes in machinery, the use of the principle of functional representation in parliament and in local councils for example, the country's political system could be brought more closely into line with the 'Indonesian identity'.

There has been a self-consciousness in this discussion which is, in itself, on the way to becoming a marked feature of Indonesian political thinking. Connected with this characteristic is the significant fact that so many of the proposals which have been advanced for meeting the contemporary crisis are proposals concerning machinery—the establishment of deliberative bodies, the requirement that such bodies shall work in a particular way and be based on a particular kind of representation. These rather than proposals concerning the content of national policy have been the results of the President's intervention in politics.

A preoccupation with forms is perhaps natural during a period of experiment and construction, and this might have been expected particularly in the field of local government. It is suggested however

⁴ See above, 75–9.

that the reason goes deeper: that it is connected with what appears to be a distinctive Indonesian (or is it rather a Javanese?) characteristic—the desire to get things into the right conceptual terms. There is a tendency to an almost medieval exegetical approach to the study of political institutions, a determination to argue that forms do—or do not—express a general principle. In general it is never enough to devise workable machinery in response to a variety of pressures. The machinery must also be an expression of an idea, and there is the feeling that if the concept is right the machinery will be effective. Involved in the idea of the concept being right is the same Javanese idea of an approximation to a cosmic order on which temporal institutions should be modelled.

The intense concern with questions of form may be seen in discussions at many levels. An extreme example was provided by the attempt of the State Planning Council to organise its first report into seventeen chapters, eight parts, and one thousand nine hundred and forty-five paragraphs to symbolise the date of the country's proclamation of independence, August 17, 1945! A less extreme case, and one which illustrates the point more clearly, arose in the course of the local government controversy. It concerned the concept of 'dualism' and the desire to avoid a dualistic system of local government.

The Dutch system whereby a central official performed the combined duties of chairman of the executive and also supervisor of local government was said to be a dualistic system. The proposal contained in the provisional local government law for a regional head appointed from a list of candidates nominated by the regional representative council aimed at removing the dualism. The official response to the idea of election of the regional head—that if this system was to be adopted then there must be a clear division between the responsibilities of the Central Government and those of the regional government and that the *pamong pradja* must be retained to handle the former—was also said to involve a dualistic system. It would require the existence of two governments in a region—that of the centre and that of the region itself—and this was held to be undesirable. Such an objection, on the face of it, would seem to be making rather heavy weather of a comparatively simple point. Any society has a complex interaction between separate authorities, central and local, public and private. In this case,

perhaps, there may have been more substance in the objection since the authority of the centre was represented in the person of a single individual at each level. In any case, the 1957 local government law appeared to dispose of the question by providing for election of the regional head and implying the dismantling of the centre's own special service. Hereafter, though central ministries might still have their local branches there would be no separate functionary to co-ordinate their work or to be responsible for 'general government'. In that respect the local government itself would represent the Centre.

When the President, in September 1959, suspended those provisions of the local government law relating to the election of the regional head and restored the principle of direct appointment to the office the question of dualism was again discussed. At first glance the effect of the Edict was apparently to restore a dualistic system. The Edict referred specifically to the two fields of responsibility—on the one hand there was the field of general government, which was the responsibility of the *pamong pradja*, and on the other there was the field of autonomy which was the responsibility of the local authorities. The Edict planned to place leadership of both these fields in the one pair of hands—those of the regional head. As an agent of the Centre he was to be responsible for the co-ordination of Central and local tasks. He was also to be the link in the *pamong pradja* chain—the officer to whom lower ranks were responsible and who was in turn responsible to the higher ranks in matters falling outside the sphere of autonomy. This arrangement would appear, in principle, to be a reversion to the practice of the colonial period and to that followed under the first, provisional, local government law. But the Presidential Edict did not confine itself to a change in the position of regional head. It went further and made an important change in the character of the Executive Council. Formerly the regional head (whether appointed or, under the later local government law, elected) had been simply the chairman of the Executive which was responsible to the representative council. Now the regional head was to be personally responsible for the execution of government in the region, and the executive council was to be responsible to him and not to the representative council. This arrangement represented the regional counterpart to the idea of a presidential cabinet at the Centre, no longer responsible to Parliament. The concentration of

executive power, both regional and central, in the hands of the regional head involved, in effect, a fusion of the two sides, hitherto carefully distinguished. Though the Edict referred to the theoretical distinction it effectively obliterated any practical distinction between the two capacities of the regional head and thus, in the eyes of its defenders, removed the dualistic character of local government.

Even so the difference between the new arrangement and that formerly prevailing is not so great that it should have involved such abstract discussion. Many reasons of convenience might be advanced for and against the change, and it is hardly necessary that it should be defended at length on the ground that it removed a dualistic element which had formerly been present. The fact, however, is that it is so defended—in philosophical rather than in practical terms.

It is in the light of this more than platonic formalism that one must view the self-conscious preoccupation with tradition to which attention has been drawn. The search for appropriate institutions of government has gone hand in hand with the emphasis on the essentially Indonesian character of those institutions. Traditional forms, it would seem, are likely most fully to express cosmic principles. In particular the idea of consensus as the proper way of proceeding to decisions has an obvious consistency with the idea that there is one right answer to be found, so that the harmony of an agreed decision matches the harmony of the universe.

It is significant that this Javanese Platonism, as it might be called, is a recent growth. The course which political discussion has taken in recent years stands in sharp contrast to the character of the pre-war nationalist movement and to the frankly Western attitudes of the intellectual leadership of the first years of independence. The reason for the change may be related to the decline in the power and influence of the intellectual elite, to the challenges posed to the whole idea of Indonesian unity and to the critical position of the country's economy. Formalism may be merely a retreat from reality in a situation where there has been a shift in the internal balance of power and where there is a lack of sureness about policies for a time of crisis. The principle of consensus has grown in importance as its substance has receded.

DISCUSSION ON PAPERS 9 TO 11

MR. MACKIE: The point of my paper which I have hoped would come up for general discussion is the relation between the constitutional structure and the substance of political activity. A conference of this kind is bound to touch on the question of whether we can talk of any relationship between constitutions and political forces, especially the question of how different the processes of government are likely to become when constitutions either break down or cease to operate. It occurred to me yesterday that in some ways Indonesia's constitutional position might be only a few steps removed from the sort of forbidding situation that the people talking about India brought up: "When Nehru goes?" So far it has been possible to discuss Indian politics in terms of Western institutions. But people are apparently also asking what will happen if the floodbanks of a constitution break down.

However, I doubt the applicability to the Indonesian situation of some of the concepts used by Morris-Jones and Wolfsohn. I do not think that the collapse of the 1950 Constitution resulted primarily from the incompatibility of a Western idiom with a 'traditional' society. The trouble, as I see it, can be expressed fairly adequately in terms of Western institutions. Indonesian democratic institutions were simply unable to reconcile differences of interest amongst the various parties and groups involved in politics. They failed to satisfy Soekarno, who believed that they promoted oppositionism and thought he could use 'functional groups' to keep the electorate in order, as well as to express its aspirations. They also failed to satisfy the 'opposition', who indirectly backed the disobedience and revolt of 1956-58. (The 1955 election had shown up the Masjumi Party as regionally based, unable to win control in Java; so, although they took a stand on legality in respect of constitutional procedures, they were halfhearted about legality when revolt was brewing.) The proximate cause of the final collapse of the 1950 Constitution, however, was the proposal by Soekarno in 1959 to incorporate representatives of the functional groups in Parliament, to which the parties at first took only slight objection, but later rejected in the Constituent Assembly.

The argument that some different sort of constitution would have worked better leaves me unsatisfied. It is sometimes said that if it had been more 'federal' (or that if the party leaders had paid more attention to their policies and less to themselves) the problems would have been manageable. To me it seems that a constitutional division of powers between centre and regions is at present organically impossible in Indonesia. This is partly because of the peculiar economic conditions impinging on Indonesian politics, which I have explored in my paper.

At the same time there is no reason to suppose that because power is unusually dispersed, Indonesia will disintegrate; the economic stagnation of the country has perhaps given a false impression of its weakness. I agree with Legge's remarks about the toughness of Indonesian institutions. Moreover Indonesia's political structure is determined by its existing machinery of government, rather than by its formal constitution. Politics is worked out within a framework which imposes limitations on the participants; but they are not constitutional limitations, for the most part.

The basic argument behind my paper is that it is very hard to imagine how the peculiar forces operating in Indonesia could be made compatible with each other. What I feel is most interesting in this respect is the effect of administrative mechanisms, particularly forms of taxation, both in explaining the breakdown of political institutions and, I think, in throwing light on the questions which arise as soon as we arrive at the next step of the investigation. What patterns of political authority may we expect to see emerging? It seems to me that if we wish to look beyond the trends I depicted, we must simply wait to see what forms emerge under a constitution so broad that it virtually doesn't impose any limits. This question leads to the sort of subject I had originally hoped this conference might explore. How does the machinery of government crystallise in a society where a constitution is either very broad or non-existent?

DR. LEGGE: Sawyer has spoken of Indonesia as a country without a constitution in a 'revolutionary' situation. But that can be very misleading. It certainly must not be taken to mean that there is no administrative system, and in my paper I have dealt with the local government system at provincial, residency and regional levels.

The battle between political parties and the administration produced the Local Government Act of 1956 which tried to abolish the

old system of administration. The officials therefore lost the first round but Soekarno reversed the decision. Party politicians felt that the 'administration' was a relic of Dutch colonial rule; officers of the administration saw it as a specifically Indonesian solution—a thing quite in keeping with Javanese traditions. Though the forms may be Western in character, they are operated in a distinctively Indonesian way. The survival of Indonesian unity has depended a good deal on the fact that the administrative system she has maintained through this discussion of her system of government has both its traditional and imported aspects. The presence of the administrative core is, if anything is, Indonesia's Constitution.

DR. JOHNS: To my mind, Mackie and Legge have discussed the various mechanisms involved in the efficient functioning of Indonesian political institutions, and the reasons for their breakdown, but without analysing the nature of the problems that any system of government has to resolve before it can be accepted as a national, supra-regional authority. Put somewhat differently, we can say that the problem is for a constitution to gain legitimacy, and thus command loyalty. Every major area of Indonesia has its traditional pattern of local government and social organisation, usually referred to as *adat*. Ultimately, the sanctions of *adat* are magical, and if the magical pattern is broken, the group as a whole will suffer. In addition to these various *adat* systems, there are various systems of royalty, and in certain areas of Java, authority largely rests on the divine and cosmic function of the ruler. Although related, these systems of *adat* are by no means naturally sympathetic to each other. In some respects, they are incompatible.

Further, the dominantly Muslim tradition of the older generation in Sumatra distrusts the still too obviously living Hindu-Javanism of Central and East Java. Thus, the older generation, at least of the Minangkabau, tends to look on the Javanese as infidels. An additional problem lies in the difference between the type of loyalty given to the apparatus of government in a modern State, and that which ensures the stability of a traditional society. Allegiance to a modern state and acceptance of its authority rests largely on a rational basis; allegiance to a traditional way of life depends largely on its charismatic authority. Any Indonesian National Constitution then, has to be sufficiently broad in its formulation to accommodate the various groupings and tensions within Indonesian society, and

likewise to invest itself with a suitable type of charisma, since the idea of a rational basis for submission to authority is meaningless to the mass of the Indonesian population.

It is against this background that Soekarno's constitutional experiments have to be understood. He is attempting to create a myth, a logical-meaningful pattern of integration in constitutional form, which can command the allegiance of the masses. In the last analysis, however, the success of any constitution will depend on the factor that has sanctified the traditional systems: time. Only the passing of the years will ensure the stability of an Indonesian constitution, and therefore the watchword for any Indonesian constitution that is to be functional in Indonesian society, must, in the first place, be: Endure!

PROF. SAWER: In defence of my position against Mr. Legge, I must point out that in classifying Indonesia as a country in a pre-constitutional position or one of continuing revolution, I was not implying any moral judgment nor any statement at all about the stability and values of Indonesian *society*. There have often been countries where in spite of persistent revolutions at the constitutional level, the basic life of the people goes on almost undisturbed; many South American countries supply examples of this. Indeed, there can actually be steady social progress at the grass-roots while the official governmental apparatus is in a state of constant upheaval. But such a system cannot be called a constitutional one; constitutionalism comes only when governmental power is defined in terms of rules that are reasonably well observed over a considerable time. Moreover, in the contemporary world there is obviously much greater danger in a perpetual revolutionary situation than there used to be, and much less chance of satisfactory social progress, because government and social development are today so much more consciously controlled and involve co-operation with constitutional states and participation in a world system beginning to look 'constitutional'.

From a historical point of view, my insistence on the observance of rules as a hall-mark of constitutionalism certainly needs qualifying. The Romans in spite of their elaborate legal system, tended in the Imperial period to think of government in terms of the personal power and authority of the Emperor, and in modern times revolutionary democracies have sometimes tended to endow elected

assemblies with the same kind of power and 'charisma' as that of the Roman Emperor. Indeed, Austinian theories of sovereignty involve that sort of approach to the fundamentals of governmental power. The notion of government as being more a set of rules than a definition of power really grew up mainly in the U.S.A., but it is now widespread and even in England, the home of Austinian theories, there is a growing tendency to regard Parliament as a set of rules, not a group of powerful persons. Hence we can today talk intelligibly of person-oriented and rule-oriented societies. Malaya is a rule-oriented society and so is India; possibly Pakistan is too, but Indonesia is not. It should be noted, however, that these classifications do not solve the fundamental problem of why people obey governments at all; it is just as difficult to explain their adherence to a rule system as it is to explain their adherence to a system depending on personal charisma.

MRS. R. BRISSENDEN: I disagree with Mr. Mackie and think that the Wolfsohn and Morris-Jones approach and their notion of differing political idioms is of some relevance to Indonesia. I draw a distinction between the tradition-oriented forces and modern economy-oriented forces in Indonesian society. The difference between India and Indonesia is that the people who in India are the governors, in Indonesia are the governed. What we are seeing now in Indonesia is the victory of the traditional idiom in politics. The parties at the present time associated with government all in some way take their values from the traditional structure of Indonesian society.

So the P.N.I., the communists and the Orthodox Muslim Party all find their strength in Java and all draw their political style from the same framework. The P.N.I. on the one hand tends to depend on the traditional 'aristocratic' authorities, but also resorts to the personal charisma of President Soekarno where traditional values are lacking. The communists might seem hard to fit into this analysis—but they derive most of their success from providing a new set of values to fill the gap where the traditional values have broken down. All these parties may be said to orient themselves in relation to, and draw their loyalties from, the 'traditional situation'. They are the 'solidarity-makers', those who tend to talk about consensus.

In contrast, the 'administratively-minded', those who think in terms of a modern society and modern economic processes, are

outside the government. They are represented in the Opposition Parties. It is true that the administrative structures which Soekarno has created include people who are 'administratively-minded', but the institutions are subjected mainly to the personal influence of Soekarno himself.

The problem of constitutional development in Indonesia is that there does not seem to be at present any prospect of the 'two-way traffic' between the traditional idiom and the modern idiom, which Morris-Jones spoke of as occurring in India.

MR. JUSTICE ELSE-MITCHELL: The real factors lie between the fields of law and sociology, in the absence of a sound administrative foundation for the Indonesian governmental system. The root of all notions of constitutionalism is some administrative basis for a form of government. For Indonesia there are two matters that are important. First, the Dutch had their own administrative system based upon their own free economy. The local inhabitants were not integrated into the administrative system of the Dutch. Secondly, the desire for a planned economy and the demand for economy-building that the revolution in Indonesia brought, as well as the weakening of the Dutch administrative system, necessarily involved a shortage of the necessary links which are required in any system. Whatever else may be said of it, the army represents an administrative system of an integrated, centralised kind.

PROF. STONE: I wish to address myself to those who have held that Indian constitutionalism is in some danger of disintegration. I agree with Professor Sawyer that constitutionalism is related to a willingness to live according to rule. Willingness in living according to rule is a clue to the strength of the Indian Constitution. There are great tensions in Indian society; but there is also an enormous tolerance, an amazing capacity to sustain what look like unsustainable tensions. One could almost speak of a capacity of Indian society to live in controlled schizophrenia, a capacity to go its ways in face of the gravest internal incompatibilities.

To those, like Narayan, who want to found an Indian political system for the future on merely traditional institutions, rejecting Western admixtures, I would say simply that you can only start from where you are. This not only means that you cannot reach into another society and take from it an institution that works well there, and assume that it will work equally well with you. It also means

that you cannot reach back into your own traditional heritage and pick out particular institutions which formerly worked, and assume that they will work again, if now revived; or invoke some concept like 'consensus' on the village level (which, in any case, often seems in practice to be dependent on a 'cabal' or clique, some individuals to whom power is left to decide on action after the meeting has adjourned, which may not represent anything that was really agreed).

DR. LEGGE: Among other points raised in the discussion was the contrasting attitude between the Indonesian and Indian elite. In India the elite represents a Western point of view and feels itself removed from the traditional idiom. In Indonesia the elite has been Western educated, but yet it is from this quarter that the appeal to tradition is made. Separated from the village and from customary law, the vestigial aristocracy of the country is still part of a traditional social order. However the emphasis on tradition has its elements of sham. It represents a self-conscious, not an unconscious, return to the past.

Discussion also referred to the role of the administrative service in offering in a way a substitute for a constitution, a means of institutionalising the otherwise arbitrary power of a Central Government. A constitution determines what individuals are to perform what functions. Over a great part of the Indonesian political system the distribution of responsibility has not been clearly elaborated. But below the Central Government and its central bureaucracy, the territorial administration is virtually all powerful. At least it embodies the authority of the centre and it operates in a paternal way. Its operations reflect a person-oriented not a rule-oriented system. The problem in Indonesia in the current crisis does not arise from the presence or absence of adequate 'constitutional' arrangements, but of a policy to be implemented through the machinery which does exist.

In this connection reference was made to Professor MacMahon Ball's view that, while one could not necessarily expect that Western democratic institutions would survive intact in Asia, one could hope that encroaching authoritarianism might still govern 'without injustice and without terror'. If the territorial administration represented the essence of Indonesia's system of government it could be said that it did offer a possibility of paternal justice, commanding consent by tradition.

MR. MACKIE: I am interested in the application to Indonesia of Sawyer's distinction between rule-oriented and person-oriented societies. It will be intriguing to see whether in the latter, in politics where the rules have become vague, there is any hope of 'getting back to the rules'—a word which I prefer to 'laws' here. It is basic to emphasise the fact that you cannot solve Indonesia's problems by laying down clear-cut rules. Better administration would not solve the problem by itself. Someone has to sit at the top with pretty substantial discretionary powers. A lot of what Soekarno says about the need for getting away from alien institutions which have bred obstruction is undeniable. If the Masjumi party had got control, it would not have made any difference in this respect. A man like Djuanda is highly Westernised (like the Masjumi leaders) but he is an advocate of pushing on with the return to the 'traditional'. Indonesia cannot hope to achieve an economic take-off, until she has strong central government.

Brian Beddie

ISSUES AND PROBLEMS IN ASIAN POLITICS AND GOVERNMENT

THREE PRELIMINARY considerations might be touched on before coming to the main substance of the Seminar.

(1) The subject of the Seminar was Constitutionalism in Asia. In fact with very minor exceptions discussion has been confined to the constitutions and politics of South Asia. In general, limiting the subject in this way has been necessary and valuable as the complexities and number of variables which have arisen in a discussion mainly confined to India, Pakistan, Burma and Indonesia, have been great. Nevertheless, it would be wise to remember that any generalisations that we might seem to have arrived at would still have to be tested in the light of Northern Asia's experience. Consider, for example, the statement that there is a strong tendency in Asia towards a single party system because of the traditional desire for consensus. While fundamentally true perhaps, this observation might still need qualification if we were to examine it in the light of Japanese or Filipino experience.

(2) At the beginning of the Seminar many participants probably began with the notion that constitutionalism is, as it were, a specific kind of thing: something that might fairly accurately be said to be either present or absent in a particular society. Professor Sawyer provided such a definition in terms of the relation of lawyers to constitutions. Towards the end of the Seminar many were less certain as to whether constitutionalism was a 'specific thing' at all and were wondering if, like many of the other phenomena that fall into the hands of political scientists, it should not rather be regarded as a tendency—as something that can be more or less present in a society, present in some of its aspects and not in others and so on. The notion that constitutionalism should be regarded as a tendency gathered force because of the effective challenges that were made to the view that constitutionalism had broken down in Burma and

Pakistan. Some participants argued convincingly that the military regimes in those two countries represented a *restoration* of certain important aspects or ingredients of constitutionalism.

Of course regarding constitutionalism as a tendency (or set of tendencies) did not dispose of the question of definition. It was still asked "What kind of tendency is it"? Professor Morris-Jones raised an important issue in this connection. He questioned the extent to which constitutionalism was necessarily maintained by the conscious pursuit of liberty or of the other values connected with constitutionalism. He suggested that important supports of constitutionalism are simply the persistence of established procedures, established ways of doing things and established channels which enable private interests to bring their views to bear on governments. On this view constitutionalism would be something which, up to a point at least, happens automatically, something that lays hold of society and cannot always easily be shaken off.

This observation, if true, would be important because it would show that we should not be unduly pessimistic about popular criticisms of, or even revulsions against, constitutionalism in Asia. If the revulsions of opinion are temporary, constitutionalism may well survive them. Dr. Maung's remarks on the military regime in Burma have relevance here. He explained how, though the army leaders had no great attachment to the traditional values of constitutionalism, they were nevertheless much impressed by the procedures laid down in the 'Big Book' and were willing to follow these procedures (which did support constitutional liberties) to a considerable degree. Mr. Mackie too pointed out the great difference between those aspects of government in Indonesia where there are established procedures and those where the procedures have yet to be worked out. (He suggested that the establishment of full constitutionalism in Indonesia might have to await upon the working out of these new procedures.)

(3) It was fairly widely assumed that constitutionalism is something which is very firmly established in the West, which works well in the West and not only that, but something which in its Western application is pretty thoroughly understood. There was some incidental criticism of this view by Professor Morris-Jones (who referred to the new light being thrown on Western constitutionalism by electoral studies) and by Professor Stone who pointed to the

distinction between public and private law as one which presented a problem in any society. Professor Partridge suggested privately that in considering the relation of the Indian Constitution to the Indian village we should bear in mind the problems that would arise in considering the relation of the French Constitution to a French village.

It could be argued that Western constitutionalism presents more difficult problems than is generally admitted. This is because there is always a considerable element of myth or ideology surrounding constitutionalism everywhere. It is perhaps the essence of a constitution to set up a gap between aspiration and reality. Another typical feature of constitutionalism, at least in the British and American contexts, is that constitutional practice almost always runs ahead of constitutional theory. What Hegel said of philosophy seems to be certainly true of constitutional law. Rephrasing Hegel it could be said "constitutional theory appears only when actuality is there cut and dried after its process of formation has been completed".

This observation might be illustrated by referring to one of Professor Spann's suggested definitions of constitutional government. He suggested that the essence of modern constitutionalism is that it defines the structure and powers which the 'people' allows to the government, and which thereby limits the latter. While this definition has an undoubted element of truth it also has something of a nineteenth century ring. It might be said to neglect the extent to which in recent years the 'people' have relaxed their restraints on governments and urged them in the name of welfare and planning to assume greater responsibilities on their behalf; and it neglects the extent to which through the medium of the party (especially the governing party) 'people' have thus given themselves over to state control. One result of this process is perhaps that to a greater degree than we readily admit our present constitutional concerns have passed from 'people' and even parliament to the executive. In general, it might be said that relations within the executive or between parts of the executive have become constitutionally more important.

The Executive

Certainly in the early discussions during the Seminar by far the greatest concern was with constitutional relations within the

executive, or with the non-parliamentary and non-electoral side of constitutions, and this despite Dr. Menon's introductory remarks which emphasised the importance of the electorate and of the parties. The reason why attention turned towards the executive is fairly clear. It is the demand in Asian countries that the executive should exercise very wide functions. Indeed, some participants have tended to suggest that executive action may have to be so great as to render any constitutional restriction impossible. This may be so, but if so, the danger is surely not confined to Asia.

Whatever the truth about the relation of strong executives and constitutionalism, the discussion did bring out the extensive functions claimed for executives in Asia. Summarising, it might be said that alongside the ideology of constitutionalism there are the stronger ideologies of nationalism and welfare. Nationalism implies a strong executive because of the need to check disintegrating forces (sub-nationalisms) that challenge unity in most Asian countries. The details of the federal structure—emergency provisions, the appointment of governors of States, the unified civil service, and so on—show the power which the central executive is given over constituent groups. Welfare, the set of social aspirations embodied in directive principles, also clearly requires large-scale and detailed State intervention in social and economic affairs. Mr. Chari's remark that in Asia law runs ahead of social practice, whereas the reverse has been true in Europe, points to the extent to which legislation is likely to have its source in the executive rather than in widely spread popular movements.

Hence it is not surprising that, at the beginning of the Seminar, the discussion on constitutionalism tended to be a discussion of constitutional arrangements within the executive, of relations between the prime minister, the president and the courts. It is a pity perhaps that this discussion was not accompanied by a more thorough investigation of precisely what it is that executives have to undertake in Asian societies. Had there been such an investigation it might have appeared important to extend consideration beyond relations between head of State, head of government and the courts to include relations with the civil service, public corporations, government commissions, etc. Japan is perhaps an example of the importance of inter-executive relations in a developing country. The 1890 Meiji Constitution provided for only very limited parliamentary

control, but through its law and convention it provided for a complicated system of balancing relations among executive bodies—the cabinet, the Imperial Household, Privy Council, Genro and certain military and naval bodies. A kind of modified constitutionalism did continue in Japan at least until the nineteen-thirties.

Nothing in the above observations is meant to suggest that constitutionalism could be based purely on executive relationships; certainly unless popular pressures play on the various organs of the executive there will be no checking and balancing, there will simply be autocracy. Unfortunately, not a great deal of material was forthcoming on the functioning of the electoral and parliamentary side of Asian constitutions, though something was said on the surprising degree to which genuine and free elections can take place in Asian societies.

It was in the discussion of political parties that the real dilemma arose so far as popular control of the executive is concerned. The dilemma arose because of the difficulty of creating an effective opposition. Either it seems there is a single party system which makes the executive unduly powerful, or else a multi-party system which makes the executive so unstable as to create a demand for the superseding of constitutional government. Opinion differed on the issue of the single predominant party. None was willing to say that it was an entirely adequate vehicle of public opinion, and it was recognised that in Burma it seems at one time to have enabled the government to treat parliament very much as a rubber stamp. In India, on the other hand, Congress because of its range of membership and the difference in its membership at the union and state levels does constitute a more adequate check on the executive. Professor Morris-Jones, however, seemed to think that it failed to give adequate representation, particularly to middle class discontent in India, and that this could create a dangerous situation.

A point that clearly calls for more consideration is the apparent paradox that in Asian societies there is a strong tendency towards a single party (this perhaps being connected with Professor Fitzgerald's point about consensus) and at the same time a strong tendency towards factionalism. It would be interesting to explore how far the two apparently opposed tendencies spring from a single principle. Perhaps belief in, but the inability to find, the 'common good' accounts for both tendencies.

The Courts

The Seminar gave quite special attention to courts in India, Pakistan and Burma, and in the case of India had before it Mr. Chari's detailed and valuable documentation. While the general impression was that courts in the countries of Asia that came under British rule were a most important ingredient of constitutionalism, certain qualifications also emerged.

Courts in India as elsewhere have to be careful not to confuse rigidity (technical impartiality) with independence. They are likely to remain independent only so long as they adopt a liberal or broad interpretation, that is only so long as they are ready to look beyond the legal text to the balance of social forces in the community. It appears that in Burma at certain stages the courts may have been too strict. They apparently brought certain political pressures to bear on themselves, though for the most part their rulings were set aside by strictly constitutional methods.

Then there were certain problems concerned with the efficiency of the judicial system. Dr. Maung and other members of the Seminar raised the question of delays in granting justice in some Asian countries. The matter of delay is important because it raises the question: at what point does delay in granting justice amount to the denial of justice? Mr. Nish, while admitting the efficiency of courts at the highest level, questioned their efficiency at the lower levels. Professor Stone referred to the system of legal education established in India under the British and questioned whether it will be capable of turning out lawyers capable of sustaining the high standards which are maintained by present judges and advocates in India.

It would have been useful to discuss in detail a few specific cases which have been dealt with before Asian courts in recent years. Unfortunately, because time was limited and other matters diverted our attention, this was not possible. This is a pity because, especially in matters relating to human rights, the discussion of *crucial* or *test* cases is of great importance. It would be theoretically possible, I think, to have a situation where highly efficient and impartial courts might grant justice to a whole succession of individuals who came before them, but where the number of individuals were getting justice in that way would be outnumbered by those who were not. The crucial case is particularly important because it reverses a whole

social tendency and renders it unnecessary for more people in the future to go to the courts.

I am not in any way suggesting that crucial cases of this kind are not being decided in Asia. I make the point simply because if we are to judge the social efficacy of courts anywhere we must go beyond the narrow criteria of their efficiency and impartiality.

Constitutionalism and Social Structure

In the last page of his paper Professor Spann asked how far we should expect Asian constitutions to conform to the social structure of Asian countries. There seems to have been general agreement that in an important sense Asian constitutions do not, and should not be expected to conform to social structure. There is, I suggest, a quite elementary sense in which Asian constitutions do *express* social structure and are to that extent unique. Read an Asian constitution and you find in it references to various parts of its society's social structure—to racial, caste and community differences, to the nature of the under-developed economy and so on. The constitutions do, therefore, express social structure.

Whether they *conform* to social structure is a different question. If we ask whether the Malayan Constitution conforms to the racial structure, as between Malays and Chinese, the Malays might say "yes" and the Chinese "no". In short, where there are different interests the question of conformity will always be controversial. Nevertheless the question of conformity to social conditions is closely connected with the question of consensus; if a constitution does not conform, in the sense that it does not reflect an element of consensus, it may not work or may only work through the exercise of non-constitutional pressures.

When Professor Spann raised the question of conformity of constitutions to social structure he had in mind a rather different question. He was asking: can a constitution be informed by the spirit of a society, or can the genius of the social structure be reflected in the constitution? This is an important question because it has come up explicitly in the case of Indonesia. Could there be an Indonesian constitution or polity which would be informed by the spirit of 'mutual assistance' and by other traditional Indonesian social values?

On the particular question of Indonesia Dr. Legge has probably given the answer. He suggests in his paper that in appealing to guided democracy, mutual assistance, and so on, Dr. Soekarno is doing little more than providing a traditional cloak to justify the return to the Dutch colonial system of government. In general, it would seem hard to understand how any modern society carrying on large-scale bureaucratic, commercial and industrial enterprises could possibly be administered through the governmental forms appropriate to a traditional Indonesian village. It is doubtful whether even the villages now find these forms appropriate.

But does this altogether dispose of the problem as to whether a constitution cannot be informed by a social structure or at any rate by certain parts of a social structure? It does seem to me to be sensible to say a good deal of nineteenth century constitution-making was informed by a 'bourgeoisie' concerned to write into constitutions its own rights and its desire for restraints against state action. And it seems to me that it is sensible to say that twentieth century constitutions have been informed in part by classes anxious to promote state intervention, anxious to establish rights and duties connected with the notion of welfare. In still other contexts both the Soviet Constitution, if it is a constitution, and the Meiji Japanese Constitution do seem to be informed each by a special ethos. If existing constitutions have been informed by an ethos in this way, on the face of it there would seem to be no reason why a constitution could not, for example, be informed by an Islamic ethos, as Dr. Iqbal suggests.

Whatever the precise points of agreement and disagreement on the problem of constitution and social structure, Professor Spann's association of the Asian middle classes with constitutionalism seemed to be widely accepted. It is perhaps an omission of the seminar that the middle classes were not discussed in any detail. We tended to talk first of government at the highest level, and then to turn to much lower regional or even village levels. A discussion of the middle classes—of their composition, solidarity or otherwise, their function in government and in business, the intermingling of modern and traditional values in their members, and so on, might have served in a valuable way to illustrate the concrete links between government and people. The difficulty with the study of village society is that it is likely to take political scientists deeper

than they can really do. That considerations far removed from political science necessarily enter into the study of Asian society at this level was clearly brought out in Dr. Johns' remarks.

These observations are not, of course, meant to imply that the gap between the Westernised processes of modern government and traditional society can be neglected. Both Professor Morris-Jones and Mr. Wolfsohn showed that the existence of this gap goes to the heart of Asian politics and to the heart of constitutionalism in Asia. In the discussion of this gap, or more accurately of the dualism between modern Westernised processes and traditional indigenous processes, there did seem to emerge one point of general agreement. It was agreed that there is a two-way process of interaction between modernism and traditionalism. Mr. Wolfsohn was anxious to correct any impression that he believed that there was only a one-way process at work in the sense that only the modern forces were active, and that the traditional forces were passive.

This general agreement, however, still left open wide possibilities about which there could be and was disagreement. One view was that there could be and probably would be a fairly balanced process of mutual adjustment between modernism and traditionalism, that there would be a Westernising of the traditional going on alongside a traditionalising of the Western and in such a way as to allow fairly equal development. A second view admitted the incompatibility and even conflict between modern and traditional forces, but pointed out the degree to which such forces could and do *coexist* in Asia. They coexist not only in the sense that modern and traditional groups live side by side, but in the sense that modern and traditional forces coexist and without undue tension in the minds of the same individuals.

A third view, which might perhaps be attributed to Mr. Wolfsohn, might be put something like this: when the forces of modernism and traditionalism meet there is likely to be not co-existence but chemical change—an interaction as it were of two elements which produce a new substance—totalitarianism. In his paper Mr. Wolfsohn made passing references to Soviet Russia and it is possible that he, like other students, sees in communism this peculiar compounding of traditionalism and modernism to produce totalitarianism.

There seemed to be general agreement that the interaction between modernism and traditionalism and what would come out of it were closely connected with the *speed* at which the governments of Asian countries would attempt to develop their economies. The question of speed is obviously highly important, but what was lacking was a discussion of the forces which would determine the speed. Here again a discussion of the middle classes, particularly as they exist at the national and state levels in India, would be of the greatest importance.

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